

Section 5  
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**5.01 SCOPE OF REGULATIONS**

All buildings and structures erected hereafter, all uses of land, structures or buildings established hereafter, all structural alterations, conversions, reconstructions or relocations of existing structures or buildings occurring hereafter, and all enlargements of, additions to, or intensifications of existing uses occurring hereafter shall be subject to all regulations of this Zoning Code which are applicable to the districts in which such buildings, structures, uses or land shall be located, and no building, structure, use or land may be used other than that which is permitted in the district in which the building, structure, use or land is located.

**5.02 PERMITS**

No application for a building permit or other permit or license, or for a certificate of occupancy, shall be approved by the Zoning Administrator and no permit or license shall be issued by any other City department which would authorize the use or change in use of any land or building contrary to the provisions of this Zoning Code, or the erection, moving, alteration, enlargement or occupancy of any building designed or intended to be used for a purpose or in a manner contrary to the provisions of this Zoning Code.

**5.03 BUILDING HEIGHT, BULK AND LOT COVERAGE**

- A. No building shall be erected, reconstructed, relocated or structurally altered so as to have a greater height, a higher ratio of lot coverage or smaller open space about it than permissible

under the limitations set forth herein for the district in which such building is located, except that parapet walls, chimneys, cooling towers, elevator bulkheads, fire towers, stacks, stage towers or scenery lofts and necessary mechanical appurtenances, shall be permitted to exceed the maximum height provisions when erected in accordance with all other ordinances of the City. For the purposes of establishing height of a building, the measurement shall begin at the established grade on the front side of the building.

- B. No space allocated to a building or dwelling group for the purpose of complying with the side, rear or front yard, or court or other open space or lot area requirements of this Zoning Code, shall thereafter, by reason of change in ownership or for any other reason, be used to satisfy the yard, court, open space or lot area requirements of any other building or dwelling group.
- C. No usable open space or off-street parking space or loading space existing or provided hereafter for any building be reduced below the minimum requirements hereinafter set forth for usable open space, parking space or loading space, nor further reduced if already less than minimum requirements.

#### 5.04 LOT AREA AND DIMENSION

When two or more parcels of land, each of which lacks adequate area and dimension to qualify for a permitted use under the requirements of the use district in which they are located, are contiguous and are held in one ownership, they shall be used as one zoning lot for such use.

#### 5.05 LOCATION OF BUILDINGS

Except as otherwise provided for in this Zoning Code, every building shall be constructed or erected upon a lot or parcel of land which abuts upon a public street or permanent easement of access to a public street, which easement shall have a minimum width of 25 feet, unless an easement of lesser width was of record prior to the adoption of this Zoning Code.

#### 5.06 BUILDINGS UNDER CONSTRUCTION

Nothing in this Zoning Code shall be deemed to require any change in the plans, construction or designated use of any building or structure upon which actual construction was lawfully begun prior to the adoption of this Zoning Code, or any subsequent amendment thereto that would affect said plans, construction or use, provided, however, that construction is begun or the use is begun to be established within one year from such effective date of adoption or amendment, and said construction or establishment of use has been diligently carried on to completion in accordance with the approved plans on the basis of which a building permit or other permit has been issued, and furthermore, may upon completion be occupied or put into use under a certificate of occupancy or a certificate of use and compliance for the use for which it was originally designated. However, such building or establishment of use shall be completed within one year from the issuance of the building permit or other permit unless otherwise provided for in the Marengo Municipal Code. Furthermore, such a building, structure or use shall thereafter be subject to the provisions of Section 6, Non-Conforming Buildings and Uses, of this Zoning Code.

**5.07 BUILDINGS ON A ZONING LOT**

Every building hereafter erected or structurally altered to provide dwelling units shall be located on a zoning lot as herein defined and in no case shall there be more than one such building on one zoning lot.

**5.08 REZONING OF PUBLIC and SEMI-PUBLIC AREAS**

An area indicated on the zoning map as a public park, recreation area, public school site, cemetery or other similar open space, shall not be used for any other purpose than that designated and when the use of the area is discontinued, it shall automatically be zoned to the most restricted adjoining district until such time as the Mayor and City Council designate a different classification in accordance with the provisions of this Zoning Code.

**5.09 VISION CLEARANCE, CORNER LOTS** *Amended, 08-1-4*

On corner lots no building hereafter erected and no planting or other obstruction to the vision of drivers of motor vehicles shall exceed a height of three feet above the grade within 25 feet of lot lines which are adjacent to streets.

**5.10 REGULATION OF SPACE AND DENSITY OF RESIDENTIAL DWELLING UNITS**

No person shall occupy or let to be occupied any dwelling unit, for the purpose of living therein, unless there is compliance with the requirements of this Section 5.10.

1. The maximum occupancy for any dwelling unit shall not exceed the lesser value of the following requirements:
  - a. For the first occupant, there shall be at least 1,000 square feet of habitable floor space. There shall be at least 200 square feet of habitable floor space for every additional occupant.
  - b. The total number of persons shall be no more than two times the number of habitable bedrooms within the dwelling unit.
2. Habitable floor space shall be permitted in a basement only when the floor is not more than four feet below finished grade level at all exterior walls containing openings required for natural light and ventilation.
3. No space located more than four feet below grade shall be considered habitable space, except that a basement recreation or family room, where a separate living room is provided elsewhere in the dwelling unit, may have a floor level more than four feet below finished grade level.

4. Every room occupied for sleeping purposes shall contain at least 100 square feet of habitable floor space.
5. Within every dwelling unit there shall be a bathroom with a flush water closet in good working condition for each six persons or fraction thereof living within that dwelling unit.
6. Habitable space shall include a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, laundries, furnace rooms, pantries and utility rooms of less than 50 square feet, foyers or communicating corridors, stairways, closets, storage space and workshops.

#### 5.11 HOME OCCUPATIONS - REGULATIONS

The conduct of business or commercial activity in dwelling units in residential zoning districts may be permitted under the provisions of this Section 5.11. Home occupations shall be regulated as follows:

1. A home occupation is an accessory use by the occupant(s) of a dwelling unit in which goods are produced or traded, or services are rendered as an economic enterprise. Such use shall be clearly incidental or subordinate to the residential use of a dwelling. Beauty shops, barber shops and massage services are not considered home occupations.
2. Home occupations do not include garage or yard sales.
3. Home occupations are permitted as an accessory use to a residence only when all of the following criteria are met:
  - a. Area of use: Home occupations shall be entirely contained within the interior of a residence or located in garages or accessory structures on the site. No visible evidence of the business shall be apparent from the street nor surrounding area. A home occupation shall use no more than 20 percent of the total dwelling unit floor area. Those home occupations which require occasional meetings using more than 20 percent of the floor space may be permitted providing such meetings do not occur more frequently than once a month.
  - b. Employees: The home occupation shall be conducted by family members residing on the premises with no assistance from other individuals or groups.
  - c. Sales, repairs and leasing:
    - i. Sales: The commercial exchange of tangible goods or other items constituting a sale between the proprietor of a home occupation and members of the general public shall not be permitted on the premises of a home occupation. Members of the general public shall not include persons in the home by prior individualized invitation.

- ii. Leasing: The exchange of items in a lease agreement between the proprietor of the home occupation or an assistant and a customer shall not occur on the premises of a home occupation.
- d. Traffic and parking: No parking in the public right-of-way shall occur as a result of this home occupation except for occasional meetings. If parking for a home occupation occurs in a manner of frequency causing disturbance to the normal traffic flow for the neighborhood, the occupation shall be considered a business best handled in a commercial district rather than as a home occupation.
- e. Changes to exterior: The appearance of a dwelling as a residence shall not be altered to the extent that attention is drawn to the structure as a commercial or business operation. Alterations of building material, size or color, lighting fixtures or intensity, parking area or any other exterior change should not cause the structure to lose its residential character nor should it detract from the residential character of the neighborhood.
- f. Nuisance controls: A home occupation shall not create excessive noise, dust or dirt, heat, smoke, odors, vibration and glare or bright lighting which would be over and above that created by a single-family residential dwelling. The production, dumping or storage of combustible or toxic substances shall not be permitted on site. Additionally, a home occupation shall not create interference or fluctuations of radio or television reception.
- g. Visitation: A home occupation may attract patrons, students or any business-related individuals only between the hours of 6:00 a.m. and 9:00 p.m. At any time during the day or evening, the parking standards in this Zoning Code shall apply to the activity generated by the home occupation, excluding family day-care homes. A home occupation shall not generate more than six arrivals and six departures per day by vehicles. Family day-care operations shall not generate more than 12 arrivals and 12 departures per day by vehicles. These standards shall not be construed so as to prohibit occasional group gatherings, recitals or demonstrations. However, such gatherings shall not occur more frequently than once per month and must be held within the visitation hours specified herein.
- h. Signage: Signage or other forms of advertising pertaining to the home occupation may be placed or painted onto the exterior of the residence or in the yard of a residence. These signs may not exceed two square feet in area.

5.12 **FENCES, SHRUBS, HEDGES AND DECORATIVE STRUCTURES** *Amended, 08-1-4, 04-3-1*

In order to provide for the maximum safety of persons using the streets, rights-of-way, sidewalks and other public ways of the City, and to provide for the maximum enjoyment of the use of property, the following regulations shall apply to all fences, hedges and similar structures or elements located in the City.

1. For purposes of minimizing traffic hazards at street intersections by improving visibility for converging vehicles, obstructions higher than three feet shall not be permitted to be planted, placed or erected on any corner lot within the triangular portion of land designated as "restricted area." This triangular area shall consist of a portion of land extended from the corner of the lot 25 feet in either direction.
2. No barbed wire or other sharp pointed fence and no electrically charged fence shall be erected or maintained except in the industrial district. In the industrial district barbed wire cannot be lower than six feet from ground level. This requirement does not apply to agricultural zoned property.
3. No permanent fence or retaining wall shall be constructed or erected within any public street or alley right-of-way unless authorized by the City Council. Fences erected on public easements or across ditches shall be so constructed that drainage shall not be obstructed. Fences erected in any overland drainage easement shall be constructed to be at least 50 percent open to facilitate the passage of storm water/drainage. For every one unit of horizontal, vertical and diagonal fencing aforementioned, 50 percent requirement may be reduced if an adequate opening is provided at the base of the fencing to allow for the free passage of water in sufficient amounts as deemed appropriate by the City Administrator, Building Commissioner or the City Engineer. In the event of necessity for removal of such fence for maintenance or other purpose, removal and/or replacement of such fence or other improvement shall be the responsibility of the property owner.
4. Fences, walls and hedges in all residential districts shall not exceed a maximum height of six feet and may be located up to lot lines.
5. Fences, walls and hedges in the industrial district shall not exceed a maximum of eight feet and may be located up to lot lines.
6. With the exception of corner lots (see paragraph 1 herein), fences, walls and hedges shall not exceed four feet in height when located in the front and corner side yards. Chain link fencing is prohibited in front and corner side yards.
7. On a through lot both street lines shall be deemed front lot lines, but in the case of two or more contiguous through lots there shall be a common front.
8. All of the framing on any fence shall be on the interior side of the fence.
9. A wall of a private swimming pool shall not be located less than 10 feet from any rear or side property line or 10 feet from the side lot line abutting a street or 10 feet from any principal structure.

5.13 **YARD AND BUILDING SETBACK EXCEPTIONS** *Amended, 08-1-4*

The following structures or structural elements shall be allowed to project into or to be constructed

in any required yard, or beyond the building setback line, except as otherwise provided in this Zoning Code, and except that in no case shall such structure, structural element, or component part thereof extend beyond the property line:

1. Accessory buildings or structures as provided for in Section 7 of this Zoning Code.
2. Air conditioner (window); central air conditioner, provided that the unit is placed next to the dwelling if for residential use, and placed as designated on an approved site plan and the hot air is baffled in an upward direction if for non-residential use. Central air conditioners shall be prohibited in front yards.
3. Awnings and canopies as governed by Chapter 16 of the Municipal Code.
4. Balconies, unenclosed, not to exceed three feet in depth.
5. Bay or bow windows, one or two stories, not to exceed three feet in depth.
6. Driveways and curbs.
7. Fences, walls, hedges and decorative structures as provided for in Section 5.12 of this Zoning Code.
8. Fireplace chimneys, not to exceed three feet in depth, so long as the chimney chase does not exceed six feet in width.
9. Landscape features and plant materials, such as trees, shrubs and flowers. Planter boxes attached to a building shall not exceed two feet in depth.
10. Overhanging or projecting roofs, eaves, cornices or other similar architectural features, not to exceed two feet in depth (including any gutters attached thereto). For any portion of such features in excess of two feet in depth, only the portion in excess shall count towards any setback or yard requirements.
11. Parking spaces as governed by Section 8 of this Zoning Code.
12. Public or municipal utility equipment and supporting structures.
13. Sidewalks and ramps.
14. Signs as governed by Chapter 16 of the Municipal Code.
15. Steps, stairs and porches, all unenclosed, attached to and projecting from a principal building or to give access to a principal building, not to exceed four feet in height or depth.
16. Yard lights and parking lot lighting poles and fixtures.

17. Fire escapes not to exceed four feet into required yard.
18. Patios, no limit of intrusion.
19. The United States flag, a state flag, a municipal flag or a corporate flag are exempt from this restriction. One flag of each type shall be allowed on each zoning lot. Flags shall hang no greater than one third the length of the pole that it is on. Flagpoles shall be no higher than 30 feet.

5.14 **TRAVEL TRAILERS AND RECREATIONAL VEHICLES** *Amended, 08-1-4*

The requirements of paragraphs 1, 3 and 4 herein do not apply to travel trailers or other recreational vehicles parked on a permitted recreational vehicle sales lot.

1. Not more than one travel trailer or other recreational vehicle shall be parked on any one lot.
2. No travel trailer or other recreational vehicle shall be used as a dwelling.
3. No travel trailer or other recreational vehicle shall be used as an office or for any other commercial purpose except for approved construction offices.
4. If no City sidewalk is present, the parking of a travel trailer, utility trailer or other recreational vehicle shall only be permitted behind the front property line between the dates of April 15 and October 15. The parking area must be paved in accordance with Chapter 8, Off-Street Parking and Loading, of this Zoning Code. After October 15 and prior to April 15, the parking of a travel trailer, utility trailer and/or other recreational vehicles shall only be permitted behind the building setback line.
5. All travel trailers and recreational vehicles shall conform to and not exceed regulations for height and weight restrictions when used within City boundaries. No vehicle shall be parked or stored in a manner that inhibits or impedes travel on City throughways.
6. Storage or parking of travel trailers and recreational vehicles must not violate any existing Marengo Fire Protection District code.
7. In rear yards and side yards, parking of only the following types of vehicles shall be permitted in addition to private passenger vehicles:
  - a. Travel trailer, 35 feet or less in length and not to exceed eight feet in width.
  - b. Camper trailer (pop-up) shall be stored in a collapsed position
  - c. Pop-up camper, 24 feet or less in length and not to exceed 66 inches in height.
  - d. Watercraft, 35 feet or less in length, but not to exceed 12 feet in height, either mounted on a boat trailer or unmounted; also boat trailer without boat mounted.

- e. Trailers used as sales offices and/or construction offices or construction storage may remain on a construction site during the period in which the building and/or subdivision is under construction. Upon issuance of the final occupancy permit for a single building project, or the occupancy permit for the final building in a subdivision, all construction trailers must be removed.

#### 5.15 **OUTSIDE DISPLAY, SALES AND STORAGE SPECIAL PERMIT**

No outside display, sale or storage of materials (raw, semi-finished, or finished in nature), vehicles (including tractor trailers), equipment, merchandise and other similar goods or containers, shall be permitted except by issuance of a special permit unless specifically allowed in the use restrictions section in the specific zoning district. Consideration for the issuance of an Outside Display, Sales and Storage Special Permit shall be based upon the following criteria:

1. A site plan, site lighting plan, site design plan, landscape plan, engineering plan and building elevations shall be provided, as applicable, to demonstrate that the proposed special use will not have a negative effect upon the surroundings or adjacent properties. An engineering plan that addresses stormwater management in accordance with Chapter 28 of the Marengo Municipal Code shall be required where paving of display, sales or storage areas occurs, since such paving will contribute to or increase on-site run-off.
2. An on-site circulation plan for both pedestrians and vehicles, illustrating the location of the outdoor display, sales or storage area, shall be provided that demonstrates that no adverse effect on circulation, parking or general functioning of the site will occur.
3. All outdoor storage areas shall be enclosed by a screening fence, wall or densely planted evergreen hedge and associated appropriate landscaping treatment, of a height sufficient to screen such containers, storage areas or products from view of adjoining properties of public and private streets. The primary requirement shall be for landscaping screening. The substitution of walls or fencing shall be deemed a secondary solution subject to proof of hardship. Stored materials shall not exceed the height of the screening, and no materials, goods, vehicles and the like shall be displayed, sold or stored outside of the screened area. Solid latch able doors or gates thereto shall be required. Walls or fencing shall be of the same material as the principal building or shall be of a compatible material. The City shall reserve the right to regulate the nature, height and location of the screening and to impose any other terms and conditions as is deemed in the best interests of the City as part of the review of the special use.
4. Written evidence shall be provided that standards and requirements for health, safety and environmental protection by the City, as well as those required by jurisdictions other than the City, have been met.
5. All activities involving the manufacturing, fabricating, assembly, disassembly, repairing, cleaning, servicing and testing of materials, products, vehicles and goods shall be deemed ineligible for an Outside Display, Sales and Storage Special Permit and shall be conducted

solely within completely enclosed buildings.

6. All display, sales and storage areas shall be confined to locations in the rear of the building erected on the premises, or at the side of said building and behind the front line of said building as extended, but not both, unless the petitioner can demonstrate that no adverse impact is created.
7. Anything displayed, sold or stored outdoors that has a tendency to be windborne shall be effectively covered so it does not become windblown.
8. All areas to be used for outside display, sales or storage shall be covered with a hard surface, such as two inches of asphalt or four inches of concrete, or as the City shall otherwise require.
9. Existing outside display, sales or storage uses that are rendered nonconforming by virtue of enactment of these regulations shall be made conforming with the issuance of an Outside Display, Sales and Storage Special Permit by the City or shall be removed on or before December 31, 2002.

#### 5.16 **USE OF COMMERCIAL TRUCK TRAILERS AND RAILROAD CARS FOR STORAGE**

Under no circumstances may commercial truck trailers and/or railroad cars be placed on any lot for the purpose of serving as a place for storage.

#### 5.17 **REFUSE CONTAINERS**

Multifamily residential dwellings with four or more dwelling units shall place all refuse containers in visually screened areas. All multifamily units that have refuse containers which are one or more cubic yards in volume shall be in visually screened areas.

#### 5.18 **DETERMINATION OF SIMILAR AND COMPATIBLE USES**

It shall be the duty of the Zoning Administrator to review and determine whether uses that are not specifically enumerated in any zoning district are similar and compatible to those use/uses that are specifically enumerated within a particular district. The Zoning Administrator may approve any such use/uses within a particular district, upon a finding by the Zoning Administrator that such use/uses are similar and compatible to those use/uses enumerated within the particular district for which the use is being requested. The approval or denial of such use/uses within a particular district by the Zoning Administrator shall be in writing, stating the reasons therefor, and the determination of the Zoning Administrator shall be appealable to the Planning and Zoning Commission. Any appeals from the determination of the Zoning Administrator must be in writing, specifying the grounds for appeal, and filed with the office of the Zoning Administrator within 30 days of the written determination of the Zoning Administrator. Any appeal from a decision of the Zoning Administrator pursuant to this Section 5.14 shall be processed in accordance with the provisions of Section 13 of this Zoning Code. *pjh:Marengo.Zone\Section05.GeneralProvisions.Jan08.doc*