

## Article XIII. General Regulations

### § 440-136. Use regulations.

- A. Permitted uses. A permitted use is a use permitted by-right. The permitted uses are set forth in each applicable zone.
- B. Conditional use. See Article XVI Conditional Use Permits.
- C. Interpretation of uses. A use not specifically listed as permitted in a zone is prohibited unless determined similar in accordance with.
  - (1) Determination of similar uses. A determination as to whether a use is similar to a use permitted by right shall be considered an expansion of the use regulations of the zone and not as a variance applying to a particular situation. Any use found similar shall be included in the list of uses permitted by right.
  - (2) Application
    - (a) All applications for permits involving uses not specifically listed among the uses permitted by right in any zone shall be submitted to the City Manager.
    - (b) The City Manager shall have the authority to determine that a use is similar to a use permitted by right.
  - (3) Standards governing the determination of similar use
    - (a) That the use closely resembles and contains the same characteristics as the classification to which it is to be added.
    - (b) That the use does not create dangers to health and safety, and does not create offensive noise, vibrations, dust, heat, smoke, odor, glare, or other objectionable influences to an extent greater than normally resulting from other uses listed in the classification to which it is to be added.
- D. All structures shall have visible address numbers on the structure in accordance with the most recently adopted edition of the International Property Maintenance Code.

### § 440-137. Prohibited uses (nuisances).

- A. No lot or premises may be used, in or within one hundred (100) feet of a residence for any use which is noxious or offensive by reason of odor, dust, vibration, illumination or noise, or which constitutes a public hazard whether by fire, explosion or otherwise.
- B. In all zones, no noxious, offensive, or hazardous use shall be permitted unless adequate provision is made to reduce and minimize such objectionable elements to

the satisfaction of the Planning Commission. In order to ensure adequate safeguards are provided and maintained, and in order to determine whether a use is injurious to the public health or safety, the Planning Commission may consult such official agencies or private experts as it deems necessary.

**§ 440-138. Nonconforming uses.**

- A. Continuation. Any lawful use of a building or land existing at the effective date of this chapter may be continued even though such use does not conform to the provisions of this chapter.
- B. Extension. A nonconforming use may not be extended.
- C. Changes. If a nonconforming use is changed, the subsequent use must conform.
- D. Restoration. A nonconforming use in which the building wholly or partially destroyed by fire, explosion, flood, or other phenomenon, may be reconstructed and used for the same nonconforming use, provided that building reconstruction shall be commenced within one (1) year from the date the building was destroyed or condemned, and shall be carried on without interruption.
- E. Abandonment. If a nonconforming use is abandoned and ceases for a continuous period of one (1) year or more, subsequent use of such building or land shall be in conformance with the provisions of this chapter.

**§ 440-139. Home occupation.**

A. Permitted home-based businesses

- (1) Offices for professionals including architects, brokers, counselors, clergy, dentists, doctors, draftspersons and cartographers, engineers, insurance agents, lawyers, real estate agents, accountants, editors, publishers, journalists, psychologists, contract management, graphic design, construction contractors, landscape design, surveyors, cleaning services, salespersons, manufactures' representatives, and travel agents.
- (2) Personal services including barbershops, beauty parlors, manicure and pedicure shops, pet grooming, catering, and chauffeuring services.
- (3) Instructional services including music, dance, art and craft classes, and tutoring.
- (4) Family child care.
- (5) Studios for artists, sculptors, musicians, photographers, and authors.

- (6) Workrooms for tailors, dressmakers, milliners, and craft persons including weaving, lapidary, jewelry making, cabinetry, and woodworking.
- (7) Repair services including small appliances, computers, electronic devices, and small engines (all materials and equipment shall be stored indoors).
- (8) Direct sales parties.

B. Prohibited home-based businesses

- (1) Kennels, veterinary clinics, and hospitals.
- (2) Medical clinics, dental clinics, and hospitals.
- (3) Restaurants, bars, and night clubs.
- (4) Funeral homes and undertaking establishments.

C. Operational standards

- (1) No more than twenty-five (25) percent, or four hundred (400) square feet of the floor area of the dwelling unit, whichever is less, shall be devoted to the home occupation.
- (2) Operating Hours
  - (a) General standard. Customer and client visits to the home-based business are limited to the hours from 8:00 A.M. to 8:00 P.M.
  - (b) Additional provisions
    - [1] These operational standards recognize that some home-based businesses occasionally rely on client/customer visits that begin before 8 A.M. and last beyond 8:00 P.M.
    - [2] Businesses shall be considered as operating within the home-based business standards as long as they do not cause undue traffic congestion, and comply with the standards governing equipment used or operated by home-based businesses.
- (3) Employees
  - (a) On-premise employees. A home-based business shall have not more than two (2) non-resident employees on the premises at any one time.

- (b) Off-premise employees. The number of non-resident employees working at locations other than at the home-based business, is not limited.
- (4) Equipment. Equipment used in, and the operation of a home-based business, shall not:
  - (a) Create any vibrations, heat, glare, dust, odors, or smoke discernible at the property lines;
  - (b) Generate noise that violates any municipal ordinance or regulation pertaining to noise;
  - (c) Create any electrical, magnetic, or other interference off the premises;
  - (d) Consume utility quantities that negatively impact the delivery of those utilities to surrounding properties;
  - (e) Use and/or store hazardous materials in excess of quantities permitted in residential structures.
  - (f) There shall be no outdoor storage of equipment or materials used in the home occupation.
  - (g) No display of goods is visible from the street.
  - (h) City fees, including sewer, water, and trash fees, including, but not limited to impact and connection fees, may be increased to compensate the City for increased usage of such utility.
- (5) No alteration of the principle residential building shall be made which changes the character and appearance thereof as a dwelling.
- (6) Signage. Signage shall comply with the requirements provided in Article XIV, Signs.

**§ 440-140. Accessory uses, buildings, and structures.**

- A. Except as otherwise provided, accessory uses, buildings, and structures are permitted in the R-1, R-2, R-3, R-4, C-1, C-2, C-3, and TND Zones, including, but not limited to:
  - (1) Solar panels not attached to the building
  - (2) Wind turbines
  - (3) Carports

(4) Antennas

(5) Storage building/shed

B. A use is an accessory use if it meets all of the following criteria:

(1) Is incidental and subordinate to the principal use; and

(2) Is customary to the principal use; and

(3) Is operated and maintained under the same ownership and on the same lot as the principal use; and

(4) Does not include structures or structural features inconsistent with the principal use; and

(5) Does not contain habitable space.

C. All accessory buildings and structures must adhere to Table 13.1, Dimensional Standards for Accessory Buildings and Structures for Residential Uses and C-1, C-2, C-3, and TND Zones, or Table 13.2, Dimensional Standards for Accessory Buildings and Structures for Manufacturing and Industrial Park Manufacturing Zones.

**Table 13.1. Dimensional Standards for Accessory Buildings and Structures for Residential Uses and C-1, C-2, C-3, and TND Zones**

<b>Standard</b>	<b>Detached Accessory Buildings</b>
Location	Rear yard
Setbacks	-
Side	5 feet
Rear	5 feet
Distance from main building	10 feet
Maximum Height	The maximum height of accessory buildings and structures shall not exceed the height of the principal structure. See § 440-142, Height Limit Exemptions.
Maximum Lot Coverage	Must be included in calculation of coverage for principal building

*Note: The minimum setback maybe adjusted based on the location of tax ditch easements. Contact the Tax Ditch Association (DNREC) to determine easement locations.*

**Table 13.2. Dimensional Standards for Accessory Buildings and Structures for Manufacturing and Industrial Park Manufacturing Zones**

Standard	Detached Accessory Buildings
Location	Front, side, and rear
Setbacks	-
Front	20 feet
Side	5 feet
Rear	20 feet
Distance from adjacent Residential zone	100 feet
Maximum Height	45 feet
Maximum Lot Coverage	Must be included in calculation of coverage for principal building

**§ 440-141. Dimensional and density standards.**

All lots and structures must adhere to Table 13.3, Dimensional and Density Standards.

**Table 13.3. Dimensional and Density Standards**

Zone	Minimum Lot Requirements			Minimum Yard Requirements			Max. Height <sup>1</sup> (feet)	Max. Lot Coverage <sup>2</sup> (%)
	Lot Area (sq. ft.) <sup>4</sup>	Width (feet)	Depth (feet)	Front <sup>5</sup> (feet)	Side (feet)	Rear (feet)		
<b>R-1 Single-Family Residential</b>								
Single-family detached	7,500	75	100	35	7.5	30	35	40%
Manufactured home	5,000	50	100	20	7.5	10	35	40%
<b>R-2 Duplex Residential</b>								
Single-family detached	See R-1							
Duplex	3,750/unit 7,500/duplex	37.5/unit 75/duplex	100	25	7.5	30	35	50%
<b>R-3 Townhouse Residential</b>								
Single-family detached	See R-1							
Duplex	See R-2							
Townhouse	1,800	18	100	15	See §440-42	30	35	50%
<b>R-4 Multi-Family Residential</b>								
Single-family detached	See R-1							
Duplex	See R-2							
Townhouse	See R-3							
Multi-family	7,500	75	100	15	See §440-52	See §440-52	45	50%
<b>C-1 Neighborhood Commercial</b>								
Commercial	3,500	75	100	25	7.5	20	35	50%
<b>C-2 Central Commercial</b>								
Mixed use and non-residential	See Article VIII, Central Commercial Zone (C-2)							
<b>C-3 Service Commercial</b>								
Commercial	7,500	75	150	25	10	20	35	50%

TND Traditional Neighborhood Development								
Single-family detached	3,500	40	80	5 min. 15 max.	5 min. 10 max.	30	35	65%
Cottage	2,500	30	80	5 min. 15 max.	5 min. 10 max.	30	35	65%
Duplex	3,000/unit 6,000/duplex	30 /unit 60/duplex	80	5 min. 15 max.	5 min. 10 max.	30	35	65%
Townhouse	See R-3						45	85%
Multi-family	See R-4						45	85%
Non-residential (Retail, Service, Office, Institutional)	2,500	25	100	See § 440-128, Development Standards		45	85%	
Residential above Retail/Office	See § 440-128, Development Standards						45	N/A

Notes:

1. See §440-142, Height limit exemptions.
2. Includes both principle, accessory buildings, and impervious coverage.
3. Tract Area is the minimum acreage or square footage needed to develop land for each unit type.
4. Lot Area is the minimum lot size for each dwelling unit type.
5. See § 440-145, Front yard adjustments.

**§ 440-142. Height limit exemptions.**

The height limitations of this chapter do not apply to appurtenances usually required to be placed above the roof level and not intended for human occupancy. Such appurtenances are:

- |            |   |                  |              |
|------------|---|------------------|--------------|
| Belfries   | Lightning rods                          | Smoke stacks     | Ventilators  |
| Chimneys   | Ornamental towers                       | Solar collectors | Water tanks  |
| Cupolas    | Public monuments                        | Spires           | Water towers |
| Flag poles | Television antennas for residential use | Sky lights       | Windmills    |

**§ 440-143. Lot frontage.**

- A. Street frontage of any lot shall be as specified in the dimensional and density standards of this article measured along the right-of-way line.
- B. Double frontage lots. Double frontage lots shall be avoided except where necessary to provide separation of residential development from traffic arterials or to overcome specific disadvantages of topography and orientation.

**§ 440-144. Projections into required yards.**

- A. See Table 13.4 Permitted Projections into Required Yards.
- B. Projections into required yards refer to structural features and elements that are permitted, without a variance, to extend into the setbacks otherwise specified by this

chapter. These structural features and elements may be constructed within the required setbacks as otherwise permitted.

**Table 13.4. Permitted Projections into Required Yards**

Type of Projection	Front Yard	Interior Side Yard	Corner Side Yard	Rear Yard
Balconies, bay windows, entrances, oriels, and vestibules less than 10 feet wide	3 feet	3 feet	3 feet	3 feet
Decks, platforms, or similar raised structures	Not permitted	Not permitted	Not permitted	6 feet
Outside stairways	Not permitted	Not permitted	Not permitted	6 feet
<b>Porches, steps, stoops, terraces, and similar features</b>				
Open	5 feet	3 feet	3 feet	9 feet
Roof covering porches, steps, stoops, terraces	4 feet	Not permitted	Not permitted	4 feet
Enclosed, including screened-in porches	Not permitted	Not permitted	Not permitted	Not permitted

**§ 440-145. Front yard adjustments.**

The front yard required for a dwelling in any zone which permits residences may be reduced in the case of a dwelling to be located between two (2) existing dwellings or in line with an existing structure which lack the required front yard. In the case of two (2) nonconforming front yard setbacks on adjoining lots, the front yard shall not be less than the average of the two adjoining lots.

**§ 440-146. Minimum roof pitch.**

All new construction in residential zones shall have a minimum roof pitch of 4:12 and a maximum of 12:12 (measured as the ratio of the roof's rise to its horizontal run).

**§ 440-147. Fences and walls.**

Fences and walls shall be permitted in any residential zone, subject to the City Manager's approval of materials and the following restrictions:

A. Height limitations for fences and walls

- (1) Front yard: not exceed four (4) feet in height
- (2) Side or rear yard: the maximum height shall be six (6) feet
- (3) Setback: six (6) inches from property line.

B. No fence shall be erected, altered, or maintained in such fashion as may cause danger to traffic on a street, alley, or public road by obscuring the view.

C. Chain-link fences are permitted in residential zones only in the rear yard.

**§ 440-148. Visibility at intersections within “sight triangle”.**

At street intersections, nothing shall be built, placed, planted, or allowed to grow higher than three (3) feet within the “sight triangle” measured along the right-of-way line above the curb level of the intersecting streets for a distance of twenty (20) feet from the intersection and formed by connecting the respective twenty (20) foot distances. Obstructions existing at the time this chapter is adopted may remain.

**§ 440-149. Sidewalks and curbs.**

A. Requirements. All new construction in the City of Harrington shall include:

- (1) Installation of sidewalks and curbing on street frontage, on corner lots and the side exposed to traffic.
- (2) New streets in subdivisions shall provide sidewalks on both sides of the street. Sidewalks shall be dedicated as part of the right-of-way of all streets.
- (3) Curbs and gutters may be required for the purposes of drainage, safety, and the delineation or protection of pavement edges.
- (4) Sidewalks and curbing must be installed before a certificate of occupancy is issued.

B. Construction Standards. See Chapter 357, Standard Specifications for Installation of Utility Construction Projects and Subdivision Pavement Design.

**§ 440-150. Wetlands.**

If wetlands are designated as existing on a property, all applicable federal, state, and county agencies' regulations shall apply.

**§ 440-151. Bufferyards.**

A. Purpose

- (1) One of zoning's most important functions is the division of land uses into zones which have similar character and contain compatible uses. All uses permitted in any zone have generally similar nuisance characteristics. Bufferyards will operate to minimize the negative impact of any future use on neighboring uses.

(2) The bufferyard is a combination of setback and a visual buffer or barrier; it is a yard or area together with the planting required thereon. Both the amount of land and the type and amount of planting specified for each bufferyard requirement of this chapter are specified and are designed to ameliorate nuisances between adjacent zones to ensure a desired character along public streets and roads. The planting units required of bufferyards have been calculated to ensure that they do, in fact, function as "buffers."

(3) Bufferyards shall be required to separate different zones from each other in order to eliminate or minimize potential nuisances such as dirt, litter, noise, glare of lights, signs, and unsightly buildings or parking areas, or to provide spacing to reduce adverse impacts of noise, odor, or danger from fires or explosions. Mature woodlands are considered the best buffers and should be used whenever possible.

B. Location of bufferyards. Bufferyards shall be located on the outer perimeter of a lot or parcel, extending to the lot or parcel boundary line. Bufferyards shall not be located along the lot frontage. Bufferyards shall not be required internally between varying uses within the TND Zone.

C. Determination of Required Bufferyard. To determine the type of bufferyard required on a parcel or between two (2) parcels or between a parcel and a street, the following procedure shall be used:

(1) Identify whether any portion or property line of the site constitutes a zone boundary. If it does, determine the zoning on both sides of the property line.

(2) Determine whether the land on the adjoining property is vacant or developed or whether a plat of the subdivision has been approved.

(3) The width of the bufferyard shall be a minimum of fifteen (15) feet unless otherwise determined by the Planning Commission.

D. Responsibility for bufferyards

(1) When a proposed use adjoins a vacant parcel for which a bufferyard is required by the presence of a zoning boundary, that use shall at the time of development provide one half ( $\frac{1}{2}$ ) of the buffer.

(2) The second use to develop shall, at the time it develops, provide all additional plant material and/or land necessary to provide the total bufferyard required between those two (2) uses.

(3) Existing plant material and/or land located on the preexisting (first developed) land use which meets the requirements of this chapter may be counted as contributing

to the total bufferyard required between it and the second (adjacent) land use to develop.

E. Acceptable bufferyard materials

(1) A brick or stone wall.

(2) Wooden fence.

(3) Vinyl fence.

(4) Planted vegetation, in which:

(a) All evergreen trees to be installed shall not be less than six (6) feet in height at the time of planting and shall be of such species that expected height at maturity shall not be less than fifteen (15) feet.

(b) One hundred (100) percent of required trees and at least seventy-five (75) percent of required shrubs shall be evergreen species.

(c) Shrub plantings shall be a minimum of three (3) feet high upon installation, with an expected height of at least six (6) feet at maturity, no unobstructed openings wider than four (4) feet will be permitted.

(d) Existing vegetation.

(e) A combination of these elements, which will meet the purpose of the requirement if deemed suitable by the Planning Commission.

**§ 440-152. Screening.**

A. Purpose. The purpose of a screen is to provide a visual barrier between unsightly or out of scale development features and the views from public streets and abutting properties.

B. Screening requirements for mixed-use and non-residential uses.

(1) All rooftop mechanical equipment and other appurtenances shall be concealed by or integrated within the roof form or screened from view at ground level of nearby streets. The following, when above the roofline, requires screening: stair wells, elevator shafts, air conditioning units, large vents, heat pumps and mechanical equipment. The screening of mechanical equipment shall not be subject to the maximum height requirements if it is unoccupied.

(2) Service and loading areas, including trash handling and recycling, outdoor storage, vehicle storage, loading docks, and wall or ground mounted equipment, shall be

located on the side or rear of the building and shall be visually screened from street and pedestrian ways with an opaque screen that may be composed of:

- (a) A brick or stone wall.
  - (b) Wooden fence.
  - (c) Vinyl fence designed to look like wood.
  - (d) Planted vegetation, in which:
    - i. All evergreen trees to be installed shall not be less than six (6) feet in height at the time of planting and shall be of such species that expected height at maturity shall not be less than fifteen (15) feet.
    - ii. One hundred (100) percent of required trees and at least seventy-five (75) percent of required shrubs shall be evergreen species.
    - iii. Shrub plantings shall be a minimum of three (3) feet high upon installation, with an expected height of at least six (6) feet at maturity, no unobstructed openings wider than four (4) feet will be permitted.
  - (e) Existing vegetation.
  - (f) A combination of these elements, which will meet the purpose of the requirement if deemed suitable by the Planning Commission.
- (3) Building construction materials and related equipment storage, provided that storage areas shall be screened from public view.

**§ 440-153. Trees.**

**A. Tree planting on lots**

- (1) The developer shall plant at least two (2) trees on each new lot.
- (2) These trees shall be in place before the time that a certificate of occupancy is issued for the structure on that lot.
- (3) The trees shall be selected from the list found in Appendix 1, Approved Trees, and shall not be invasive or nuisance species.

**B. Tree planting in open space**

- (1) The developer shall plant at least one (1) tree per three thousand (3,000) square feet of land area in all active open space areas.

- (2) These trees shall be in place before the time that the City accepts the public improvements (streets and utility infrastructure) for dedication.
- (3) The trees shall be selected from the list found in Appendix 1, Approved Trees, and shall not be invasive or nuisance species.
- (4) Tree planting and reforestation is encouraged in passive open space areas.

C. Shade trees in parking areas

- (1) Shade trees in parking areas shall be provided per the parking area landscaping requirements provided in Article XV, Parking and Access.
- (2) Parking areas that are required to be paved must be shaded by deciduous trees (either retained or planted by the developer) that have or will have when fully mature a trunk at least twelve (12) inches in diameter. When trees are planted by the developer to satisfy the requirements of this subsection, the developer shall choose trees that meet the standards set forth in Appendix 1, Approved Trees.
- (3) Each tree shall be presumed to shade a circular area having a radius of fifteen (15) feet with the trunk of the tree as the center, and there must be sufficient trees so that, using this standard, twenty (20) percent of the vehicle accommodation area will be shaded.
- (4) No paving may be placed within twelve and one-half feet (12 ½) feet (measured from the center of the trunk) of any tree retained to comply with Article XV, Parking and Access, and new trees planted to comply with Article XV, Parking and Access, shall be located so that they are surrounded by at least two hundred (200) square feet of unpaved area.
- (5) Parking areas shall be laid out and detailed to prevent vehicles from striking trees. Vehicles will be presumed to have a body overhang of three (3) feet, six (6) inches.

**§ 440-154. Open space and recreation.**

The City of Harrington shall require the reservation of recreational open space in accordance with the provisions of this section as a condition of approval for all TND, major subdivisions, and residential developments requiring conditional use approval, site development plan approval, or land subdivision approval by the Planning Commission.

A. Recreational open space areas.

- (1) Purpose. The purpose of this section is to ensure that active recreation areas are provided as an integral design element within residential developments and that

such facilities are of an adequate scale in relation to the size of the residential development and provide residents with a variety of active recreational pursuits.

(2) Definition. The following are illustrative of the types of active recreation areas and passive open space, including subsequent facilities that shall be deemed to serve recreational and open space needs, and therefore to count toward satisfaction of the requirements of this section.

(a) Active recreational open space. Land set aside as a part of a development project that is intended and designed to be used for active recreational activities. Active open space must be free of site constraints that would restrict the use and enjoyment of the open space by the community. A combination of two (2) or more of the following features or facilities shall be used:

[1] Athletic facilities, ball fields, and courts.

[2] Swimming pools, saunas, and exercise rooms.

[3] Playgrounds/tot-lots.

[4] Pocket parks with permanent amenities.

[5] Community gardens and orchards.

[6] Village greens, public plazas, and/or squares with permanent amenities.

[7] Outdoor educational facilities.

[8] Outdoor meeting or festival grounds.

[9] Trail with fitness stations.

[10] Walking, jogging, and biking trails when constructed as an accessory to central recreation facilities. The developed trail shall be the only area counted toward the area requirement.

Note: Permanent amenities include, but are not limited to, fixed benches, fixed picnic tables, pavilions, amphitheaters, kiosks, fountains, monuments, trash receptacles, bicycle racks, aesthetic lighting, perennial gardens, and similar features may be included.

(b) Passive open space. Land set aside as part of a development project that is intended to be left in its natural state, and enjoyed for its aesthetic and ecological values. Any public use of the passive open space should be consistent with the preservation of ecological functions of the open space.

- [1] Green space, open fields if an integral part of the design
  - [2] Forested areas
  - [3] Nature preserves, fish and wildlife areas, etc.
  - [4] Identified areas of cultural resources
  - [5] Areas used for stormwater management ponds, drainage swales, rain gardens, or other BMPs if the features are an integral component of the overall design, as approved by the Planning Commission.
- (c) The following activities or land uses may not be counted as a part of designated open space:
- [1] Existing rights-of way and utility easements
  - [2] Setbacks and lawns
  - [3] Stormwater management facility except for § 440-154 A 2 (b) [5]

(3) Area required

- (a) All residential developments shall provide that a contiguous recreational area in a size equal to seven and one half (7½) percent of the gross area of the development be so dedicated or reserved when the gross area is greater than five (5) acres.
- (b) The minimum area of an active recreation area shall be five thousand (5,000) square feet.

(4) Design guidelines

- (a) Integrated. Passive and active open space areas shall be an integral component of the overall development design. Active open space should be integrated with passive open space and natural areas whenever practical.
- (b) Accessible. Recreation areas shall be accessible within the development and arranged in a manner which affords reasonable access to all residents within the development. When warranted, recreation areas can be dispersed throughout the development, provided that each remote location is accessible.
- (c) Pedestrian-oriented. Recreation areas shall be pedestrian-oriented and designed with linkages to existing and planned public walkways and with other existing or planned recreation areas.

- (d) Age-oriented. The nature and scope of planned recreation areas shall reflect an awareness of, and sensitivity toward, the anticipated age groups that would reside within the proposed development.
  - (e) Parking. Designs shall consider the need for parking facilities associated with recreation areas.
  - (f) Setbacks. No structure, equipment, or game court surface required under this section shall be located nearer than thirty (30) feet to any lot line of a lot to be used for residential purposes, nor nearer than twenty-five (25) feet to any right-of-way line.
  - (g) Landscaping. Such uses shall be landscaped as determined by the Planning Commission during the site plan approval process, and where warranted, visual screening of parking areas, game courts, playground areas, and other features as necessary to preserve and protect the interests of adjoining residential properties may be required.
  - (h) Protected. Passive open space shall be permanently protected through deed restrictions or conservation easements. Passive open space shall be demarked with permanent markers to ensure against encroachment.
  - (i) No structures, lot lines, or infrastructure shall be permitted within passive open space, with the exception of walking trails.
  - (j) Active recreation facilities shall be designed and installed using National Recreation and Park Association (NRPA) standards, and in accordance with Accessible Recreation Facilities Guidelines.
- (5) Cash in lieu of recreation area construction.
- (a) Determination of suitability for cash donation. If the Planning Commission determines that the construction of recreation is not practical due to close proximity to existing available recreation facilities or infeasible due to natural characteristics of the land or will not benefit the residents of the development, the Planning Commission shall require a full or partial cash donation to be made by the developer in lieu of a full or partial dedication of land.
  - (b) Amount of each donation. The cash donation shall be as set forth in Chapter 180, Municipal Fees. The amount shall be reviewed on a regular basis as part of the budgetary process. The payment in lieu of recreation area construction shall be a maximum of fifty (50) percent.
  - (c) Payment of cash donation. One hundred (100) percent of the cash donation provided under this section shall be collected prior to issuing the first zoning compliance certificate for the development.

B. Management and maintenance of common open space and recreational areas.

- (1) Management and maintenance required. There shall be provisions which ensure that the common open space land and all public facilities not dedicated to the City of Harrington shall continue as such and be properly maintained. These provisions shall be in a form acceptable to the City of Harrington. The developer shall either (a) retain ownership and responsibility for maintenance of such open land; or (b) provide for and establish one (1) or more organizations for the ownership and maintenance of all common open space. In the case of (b) above, each organization shall be a nonprofit homeowners' corporation, unless the developer demonstrates that a community open space trust is a more appropriate form of organization.
- (2) Homeowners' association requirements. If a homeowners' association or open space trust is formed, it shall be governed according to the following:
  - (a) Membership mandatory. Membership in the organization is mandatory for all purchasers of homes therein and their successors. The members of the organization shall share equitably the costs of maintaining and developing common open space and recreation areas, in accordance with procedures established by them.
  - (b) Responsibilities. The organization shall be responsible for maintenance, insurance, and taxes on common open space, recreation facilities, and open public facilities, including but not limited to roads, gutters, sidewalks, curbs, drainage systems, water distribution systems, and sewer facilities not dedicated to the City of Harrington.

**§ 440-155 to 440-170 Reserved**

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