

Subpart B - LAND DEVELOPMENT REGULATIONS

Chapter 106 PERFORMANCE STANDARDS

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FOOTNOTE(S):

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Cross reference— Buildings and building regulations, ch. 14; environment, ch. 26; planning and development, ch. 54; resources protection, ch. 110; zoning, ch. 122. [\(Back\)](#)

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ARTICLE I. IN GENERAL

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ARTICLE II. OUTDOOR DISPLAYS AND DISTRIBUTION

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FOOTNOTE(S):

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Cross reference— Outdoor display of goods, § 102-282. [\(Back\)](#)

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DIVISION 2. OUTDOOR DISPLAYS

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Sec. 106-51. Prohibited.

The outdoor display of merchandise in the historic zoning districts of the city is prohibited unless an exception is granted by the planning board, as provided in [section 106-52](#). Merchandise shall mean any good or product or sample or likeness of any good or product offered for sale by a business. Outdoor display shall mean the placement of merchandise on the exterior of a business structure, including a wall, roof, overhang, entranceway or window, or within a required setback area. For a cart, booth or arcade, outdoor display shall mean the placement of merchandise, either freestanding or by draping it, on the exterior or beyond the vertical plane of the cart, booth or arcade. In no event shall outdoor display be permitted in the public right-of-way. The prohibitions of this section shall not apply to automotive, bicycle and moped rentals and sales and to plant sales and shall not apply to art festivals or other special events duly permitted by the city commission.

(Ord. No. 97-10, § 1(3-16.1(C)(1)), 7-3-1997; Ord. No. 08-04, § 16, 5-20-2008)

Sec. 106-52. Exceptions.

Exceptions to [section 106-51](#) may be granted by the planning board as follows:

(1) Factors favoring the exception are as follows:

- a. The location of the proposed exception, while outdoors, is an interior courtyard of a building or buildings, or is a space specifically designed and permitted for use by outdoor merchants.
- b. The exception (for either the type of merchandise or the type of display) is compatible or in visual harmony with the character of the neighborhood.
- c. The exception's visual incongruity with the historic character of the neighborhood is reduced by substantial setback from public places and rights-of-way.

(2) Factors disfavoring the exception are as follows:

- a. Architecture contributing to the historical fabric or visual character of the neighborhood is obscured by the exception.
- b. The location of the proposed exception abuts, with minimal setback, a street of the historic district, thus the exception is visible from heavily used public places and rights-of-way.

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- c. The exception presents a hazard to public safety.
- (3) Exceptions to [section 106-51](#) granted by the planning board shall be for a term of no more than 60 consecutive months and may be granted subject to terms and conditions specified by the board in order to protect the architectural heritage and visual character of the district. Applications for exceptions shall be accompanied by a nonrefundable fee of \$100.00 to cover the costs to the city of processing the application and investigating the applicant.
- (4) Exceptions to [section 106-51](#) may be revoked by the planning board after notice and hearing on grounds that:
- a. The applicant has failed to comply with terms and conditions specified pursuant to the grant of an exception in this section;
 - b. The exception was granted pursuant to mistaken or misleading information; or
 - c. The exception is not compatible, or in visual harmony, with development of the neighborhood occurring subsequent to grant of the exception.
- (5) The city manager or the planning board, upon written petition by any city resident, may cause issuance of a notice of hearing on revocation of an exception, which notice shall be issued by the city clerk.

(Ord. No. 97-10, § 1(3-16.1(C)(2)), 7-3-1997; Ord. No. 06-09, § 1, 5-2-2006; Ord. No. 08-04, § 17, 5-20-2008)

Sec. 106-53. Mobile vendors excepted.

Sections [106-51](#) through [106-53](#) shall have no application to businesses duly licensed and operating pursuant to article VI of [chapter 18](#) pertaining to mobile vendors or to persons granted exemptions pursuant to [section 18-319\(b\)](#).

(Ord. No. 97-10, § 1(3-16.1(C)(3)), 7-3-1997)

Sec. 106-54. Enforcement.

Sections [106-51](#) through [106-53](#) shall be enforced by the code enforcement provisions of article VI of [chapter 2](#).

(Ord. No. 97-10, § 1(3-16.1(C)(4)), 7-3-1997)

Sec. 106-55. Advertising causing obstruction of streets or sidewalks.

It shall be unlawful for any person to conduct any advertising or publicity business or activities pertaining thereto in a manner so as to produce an assemblage of spectators and listeners and thereby obstruct or cause the obstruction of any city street or sidewalk. This restriction shall not apply to parades or advertising under the authority of a duly issued permit.

(Ord. No. 97-10, § 1(3-16.1(D)), 7-3-1997)

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Sec. 106-56. Use of streets and sidewalks for advertising or display purposes.

It shall be unlawful for any person to use any portion of a street or sidewalk in the city for advertising or display purposes except as may otherwise be provided for by this subpart B.

(Ord. No. 97-10, § 1(3-16.1(F)), 7-3-1997)

Secs. 106-57—106-85. Reserved.

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DIVISION 3. HANDBILLS

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Sec. 106-86. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Handbill means any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet or any other printed or otherwise reproduced original or copies of any matter of literature.

Newspaper means any newspaper of general circulation, as defined by general law; any newspaper duly entered with the post office department of the United States, in accordance with federal statutes or regulations; and any newspaper filed and recorded with any recording officer as provided by general law and, in addition thereto, means and includes any periodical or current magazine regularly published with not less than four issues per year and sold to the public and means and includes any other copyrighted material.

Vehicle means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks.

(Ord. No. 97-10, § 1(3-16.5(A)), 7-3-1997)

Cross reference— Definitions generally, § 1-2.

Sec. 106-87. Exemption for mail and newspapers.

This division shall not apply to the distribution of mail by the United States nor to newspapers, except that newspapers shall be placed on private property in such a manner as to prevent their being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

(Ord. No. 97-10, § 1(3-16.5(B)), 7-3-1997)

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Sec. 106-88. Inhabited private premises.

No person shall throw, deposit or distribute any handbill in or upon private premises which are inhabited, except by handing or transmitting any such handbill directly to the owner, occupant or other person then present in or upon such private premises. However, for inhabited private premises that are not posted, such person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such premises if such handbill is so placed or deposited as to secure or prevent the handbill from being blown or drifted about such premises or sidewalks, streets or other public places, and except that mailboxes may not be used when so prohibited by federal postal law or regulation.

(Ord. No. 97-10, § 1(3-16.5(C)), 7-3-1997)

Sec. 106-89. Prohibited where properly posted.

No person shall throw, deposit or distribute any handbill upon any private premises if requested by anyone thereon not to do so or if there is placed on such premises a sign bearing the words: "no trespassing," "no peddlers or agents," or any similar notice, indicating in any manner that the occupants of such premises do not wish to have their right of privacy disturbed or to have any handbills left upon such premises.

(Ord. No. 97-10, § 1(3-16.5(D)), 7-3-1997)

Sec. 106-90. Depositing on uninhabited, vacant premises.

It shall be unlawful for any person to throw or deposit any handbill in or upon any private premises which is uninhabited or vacant.

(Ord. No. 97-10, § 1(3-16.5(E)), 7-3-1997)

Sec. 106-91. Placing on vehicles.

It shall be unlawful for any person to throw or deposit any handbill in or upon any vehicle.

(Ord. No. 97-10, § 1(3-16.5(F)), 7-3-1997)

Cross reference— Traffic and vehicles, ch. 70.

Sec. 106-92. Restricted in public places.

Subject to article VIII of [chapter 18](#), it shall be unlawful for any person to hand out or distribute or sell any handbill in any public place, except that a handbill may be personally delivered to any person willing to accept the handbill.

(Ord. No. 97-10, § 1(3-16.5(G)), 7-3-1997)

Cross reference— Streets and sidewalks, ch. 62.

Secs. 106-93—106-120. Reserved.

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ARTICLE III. NUISANCES

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FOOTNOTE(S):

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Cross reference— Nuisances, § 26-31 et seq. [\(Back\)](#)

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ARTICLE III. - NUISANCES

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[Sec. 106-121. Purpose.](#)

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Sec. 106-121. Purpose.

The purpose of performance standards for nuisance abatement is to:

- (1) Control the impacts of any use, including commercial and industrial uses;
- (2) Permit potential nuisances to be measured factually and objectively;
- (3) Ensure that all industries will institute methods to protect the city from hazards and nuisances which can be prevented; and
- (4) Protect industries from arbitrary exclusion or persecution based upon the nuisance production by any particular type of industry.

(Ord. No. 97-10, § 1(3-17.1), 7-3-1997)

Sec. 106-122. Application of standards.

As of the effective date of the ordinance from which this section derives:

- (1) Any use established or changed and any buildings, structures or land developed, constructed or used for any permitted, conditional, or other permissible principal or accessory use shall comply with all of the performance standards set forth in this chapter and [chapter 94](#); [chapter 102](#); articles I, III, IV, V, VI, VII, VIII and IX of [chapter 108](#); [chapter 110](#); and [chapter 114](#) for the district involved.
- (2) If any existing use or building or other structure is extended, enlarged, structurally altered or reconstructed, the performance standards for the district involved shall apply with respect to such extended, enlarged, structurally altered or reconstructed building or other structure or portion thereof.
- (3) Within 24 months after the effective date of the ordinance from which this section derives, all existing uses, buildings or other structures shall comply with the performance standards set forth for the district involved. However, if the city commission finds that, because of the nature of the corrective action required, the 24-month period is inadequate, it may, as a special exception, grant not more than one extension for a period of not more than 12 months.

(Ord. No. 97-10, § 1(3-17.2), 7-3-1997)

Secs. 106-123—106-150. Reserved.

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[Sec. 106-151. Purpose of procedures.](#)

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[Sec. 106-153. Required data.](#)

[Sec. 106-154. Evaluation of proposed land uses.](#)

[Sec. 106-155. Evaluation of existing development.](#)

[Sec. 106-156. Action by city.](#)

Sec. 106-151. Purpose of procedures.

The purpose of the procedures for enforcing nuisance abatement standards is to ensure that an objective determination is made when there may be uncertainty as to whether an individual land use or group of land uses complies with the performance standards of this chapter and [chapter 94](#); [chapter 102](#); articles I, III, IV, V, VI, VII, VIII and IX of [chapter 108](#); [chapter 110](#); and [chapter 114](#) and to formulate practical ways for the alleviation of such noncompliance.

(Ord. No. 97-10, § 1(3-17.3(A)), 7-3-1997)

Sec. 106-152. Procedures.

Alleged violations of the performance standards, as provided in this division, shall be investigated by the administrative official and/or other designated staff pursuant to article IV of [chapter 90](#).

(Ord. No. 97-10, § 1(3-17.3(B)), 7-3-1997)

Sec. 106-153. Required data.

- (a) Following the initiation of an investigation as provided in this division, the administrative official and/or other designated staff may require the owner or operator of any proposed use to submit such data and evidence as is needed to make any objective determination. The evidence may include but is not limited to the following items:
- (1) Plans of the existing or proposed construction and development.
 - (2) A description of the existing or proposed machinery, processes and products.
 - (3) Measurements of the amount and rate of emission of such dangerous or objectionable elements.
 - (4) Specifications for the mechanisms and techniques used or proposed to be used in restricting the possible emission of any of the dangerous and objectionable elements as set forth in this division.
- (b) Failure to submit data required by the city shall constitute grounds for denial or revocation of an occupancy permit, whichever is appropriate, to meet the intent of this article.

(Ord. No. 97-10, § 1(3-17.3(B)(1)), 7-3-1997)

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Sec. 106-154. Evaluation of proposed land uses.

Subsequent to a review of proposed land uses or development plans, the city administrative official and/or other designated staff may determine that there are reasonable grounds to believe that the proposed use may violate the performance standards cited in this chapter and [chapter 94](#); [chapter 102](#); articles I, III, IV, V, VI, VII, VIII and IX of [chapter 108](#); [chapter 110](#); and [chapter 114](#). In such cases where substantial uncertainty exists as to whether a proposed new land use will comply with the performance standards, the administrative official may, at the applicant's expense, request a statement of a professional engineer registered in the state which certifies that the planned land is designed to satisfy the performance standards. Findings of the engineer shall be presented to the planning board for review and evaluation concurrent with site plan review.

(Ord. No. 97-10, § 1(3-17.3(B)(2)), 7-3-1997)

Sec. 106-155. Evaluation of existing development.

When the city ascertains a probable noncompliance by an existing land use, the administrative official, with the consent of the administrative official and/or other designated staff, shall investigate as follows:

- (1) Where determination can be made by the city staff, using equipment normally available to the city or obtainable without extraordinary expense, such determinations shall be made before notice of violation is issued.
- (2) Where technical complexity or extraordinary expense makes an investigation utilizing city personnel and/or equipment unreasonable, the city commission may retain an expert consultant to determine if a land use activity is in compliance with performance standards. Such consultant shall be fully qualified to give the required information and shall be a person mutually agreeable to the city and to the owner or operator of the use in question. If there is inability to select a mutually agreeable consultant, the city and the owner or operator may select independent consultants, in which event each party shall bear its own costs irrespective of the final determination of compliance or noncompliance with the performance standards in question. If one consultant is mutually agreed upon, the cost of the consultant's services shall be borne by the owner or operator of the use, if the use is found to be in violation of the performance standards. However, if the use is found by the final authority to be in compliance with the regulations, the city shall bear the cost of the consultant's services.

(Ord. No. 97-10, § 1(3-17.3(B)(3)), 7-3-1997)

Sec. 106-156. Action by city.

Within 30 days following the receipt of the required evidence as provided in this division, the administrative official and/or other designated staff shall make a determination as to compliance or noncompliance with the performance standards. If noncompliance occurs, the administrative official may require modifications or alterations in the existing construction of the operational procedures to ensure that compliance with the performance standards will be maintained. The operator shall be given a reasonable length of time to effect any changes prescribed by the administrative official for the purpose of securing compliance with the performance standards. If, after the conclusion of the time granted for compliance with the performance standards, the administrative official and/or other designated staff finds the violation is still in existence, the matter shall be referred for code enforcement procedures.

(Ord. No. 97-10, § 1(3-17.3(B)(4)), 7-3-1997)