

# CHAPTER 153: ZONING REGULATIONS

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## PREAMBLE

### § 153.011 TITLE.

This chapter shall constitute the zoning regulations of the City of Tontitown. It may be cited as the “zoning ordinance” or “the zoning code,” and consists of the text, which follows, as well as the zoning district boundary map, titled “Official Zoning Map of the City of Tontitown, Arkansas,” which is to be kept on file in the Office of the Recorder-Treasurer.

(Ord. 2006-08-265, passed 8-1-06)

### § 153.012 AUTHORITY.

These regulations are adopted pursuant to authority granted by the Arkansas General Assembly in A.C. Title 14, Chapter 56, Subchapter 4, as amended. All membership in the various boards and commissions having authority hereunder, acting prior to the effective date of this chapter, shall remain in office and serve the remainder of their respective terms.

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(Ord. 2006-08-265, passed 8-1-06)

## § 153.013 PURPOSE.

The zoning regulations set forth herein are enacted to aid in the implementation of the land use portion of the City of Tontitown 2005 Comprehensive Land Use Plan, and to promote, in accordance with present and future needs, the safety, order, convenience, prosperity, and general welfare of the citizens of Tontitown. The regulations are intended to provide for orderly growth and development; for protection of the character and stability of residential, commercial, industrial, recreational, and environmentally sensitive areas of the city; for protection of property from blight and undue depreciation; for efficiency and economy in the process of development for the appropriate and best use of land; for the use and occupancy of buildings; for healthful and convenient distribution of population; for good civic design and arrangement; and for adequate public utilities and facilities.

(Ord. 2006-08-265, passed 8-1-06)

## § 153.014 JURISDICTION.

The provisions of these regulations shall apply to all land, buildings and structures within the corporate limits of Tontitown as they now, or may hereafter exist.

(Ord. 2006-08-265, passed 8-1-06)

## § 153.015 NATURE AND APPLICATION.

(A) For the purposes stated above, the city has been divided into zoning districts in which the regulations contained herein will govern lot coverage; the height, area, bulk, location, and size of buildings; open space; and the uses of land, buildings, and structures. In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, order, convenience, prosperity, and general welfare. Whenever these requirements are at variance with the requirements of any other lawfully adopted rules or regulations, the most restrictive, or that imposing the higher standards, shall govern; provided however, that the City of Tontitown shall not be responsible for enforcing deed restrictions or restrictive covenants.

(B) No land shall be used or occupied, no structure shall be erected, moved, converted, altered, enlarged, used or occupied, and no use shall be operated, unless it is in conformity with the regulations herein prescribed for the district in which such structure or land is located. This provision shall not be construed to affect any lawful uses of land or structures that exist, or for which a lawfully issued permit has been issued, at the effective date of these regulations.

(C) No proposed plat of any new subdivision of land shall hereafter be considered for approval unless the lots within such plat equal or exceed the minimum size and area requirements specified in the applicable zoning district in which the land is located.

(D) No open space required by these regulations for a particular structure or use shall be claimed at the same time as open space for another structure or use.

(E) Dedication to public use of land shall not be a condition for any zoning or conditional use approval.

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(F) All structures constructed or occupied in conformance with these regulations shall also conform to all other codes and regulations of the city.

(G) The provisions of these regulations are severable. If any section, paragraph, sentence, or clause shall be declared invalid, the remainder of the regulations shall not be affected.

(Ord. 2006-08-265, passed 8-1-06)

## RULES OF CONSTRUCTION AND DEFINITIONS

### § 153.021 RULES OF CONSTRUCTION.

For the purpose of these regulations, the following rules of construction shall apply:

- (A) Words, phrases, and terms defined herein shall be given the defined meaning.
- (B) Words, phrases, and terms not defined herein but in the building code of the city shall be construed as defined in such code.
- (C) Words, phrases, and terms neither defined herein nor in the building code, shall be given their usual and customary meanings except where the context clearly indicates a different meaning.
- (D) In case of any difference of meaning or implication between the text and any heading, drawing, table or figure, the text shall control.
- (E) The particular shall control the general.
- (F) The word “shall” is always mandatory and not discretionary. The word “may” is permissive and not mandatory.
- (G) Words used in the present tense include the future tense, and words used in the future tense include the present tense.
- (H) Words used in the singular include the plural, and words used in the plural include the singular.
- (I) The words “building” and “structure” are synonymous, and include any part thereof.
- (J) The word “person” includes individuals, firms, corporations, associations and any other similar entities.
- (K) The words “lot,” “parcel,” “site,” “tract,” or other unit of ownership are synonymous and may be used interchangeably.
- (L) The word “used” shall include arranged, designed, constructed, altered, converted, rented, leased, or intended to be used.
- (M) All public officials, bodies, and agencies to which reference is made are those of the City of Tontitown, unless otherwise indicated.
- (N) Whenever reference is made to a resolution, ordinance, statute, regulation, or document, it shall be construed as a reference to the most recent edition of such resolution, ordinance, statute, regulation, or document, unless otherwise expressly stated.

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(O) Whenever a provision appears requiring the head of a department or another officer or employee to perform an act or duty, that provision shall be construed as authorizing the department head or officer or employee to delegate the responsibility to subordinates, unless the terms of the provision specify otherwise.

(P) Unless the context clearly suggests the contrary, the conjunction “and” indicates that all connected items, conditions, provisions or events shall apply, and the conjunction “or” indicates that one or more of the connected items, conditions, provisions or events shall apply.

(Q) *Expiration.* Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced.

(Ord. 2006-08-265, passed 8-1-06)

### § 153.022 DEFINITIONS OF TERMS AND USES.

This section contains definitions of general terms used throughout the text. It also contains definitions for the uses identified in the text. The use definitions are intended to be mutually exclusive, which means that uses that are specifically defined shall not also be considered a part of a more general definition of that use. For example, the use “retail/service” does not include the more specific use “convenience store.”

*ACCESS EASEMENT.* A right-of-way or parcel of land specified or set aside as the way or means by which a piece of property is approached or entered, given by the owner of land to another party.

*ACCESSORY BUILDINGS and USES.* A subordinate building or a portion of the principal building, the use of which is customarily incidental to that of the dominant use of the principal building or land. An accessory use is one that is customarily incidental, appropriate and subordinate to the principal use of land and buildings. Accessory buildings and uses are located on the same lot and in the same zoning district as the principal use.

*ADULT ENTERTAINMENT.* Any adult cabaret, adult theater, adult bookstore, adult massage establishment, model studio, or sexual encounter or meditation center which depicts or describes matters or activities relating to specified sexual activities or specified anatomical areas.

*AGRICULTURE, ANIMAL.* The use of any land for the purpose of raising livestock.

*AGRICULTURE, CROP.* The use of any land for the purpose of growing plants, crops, trees and other agricultural or forestry products.

*AGRICULTURE, PRODUCT SALES.* The retail sale of agricultural products produced on the same site.

*ALLEY.* A narrow public way, not in excess of 20 feet, which affords a secondary means of access to abutting properties, and not intended for general traffic circulation.

*ANIMAL CARE, GENERAL.* A use providing animal care, veterinary services or boarding.

*ANIMAL CARE, LIMITED.* A use providing small animal (household pet) boarding or

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veterinary services, with no outside runs.

**APARTMENT.** A room or suite of rooms within a building with separate cooking, bathing, and sleeping facilities and intended as a single dwelling unit. Structures containing three or more dwelling units are considered apartments. (Do Condominiums fall here?, they are not defined anywhere else)

(this is a common word and could refer to buildings, detention ponds, neighborhoods, etc.)

**AS-BUILT DRAWING.** A document showing how a particular building and/or site have been constructed. (See also “Plans of Record”)

**ASPHALT or CONCRETE PLANT.** An establishment engaged in the manufacture, mixing, batching or recycling of asphalt, asphalt cement, cement or concrete products.

**AUDITORIUM or STADIUM.** An open, partially enclosed or fully enclosed facility used or intended to be used primarily for spectator sports, entertainment events, expositions and other public gatherings.

**AUTO WRECKING or SALVAGE YARD.** A lot, land or structure, or part thereof, used primarily for the collecting, dismantling, storage and salvaging of machinery or vehicles that are not in operating condition, or for the sale of parts there from, or for the collecting, storage, and salvage of waste paper, scrap metal, or other discard material.

**BANK or FINANCIAL INSTITUTION.** Establishments engaged in deposit banking; typically, commercial banks, savings and loans, and credit unions.

**BASIC INDUSTRY.** The first operation or operations that transform a material from its raw state to a form suitable for fabrication.

**BED AND BREAKFAST.** The use of an owner-occupied or manager-occupied residential structure to provide temporary lodging, or lodging and meals, with no more than 12 guest rooms.

**BUILDING.** Any structure including a roof supported by walls, designed or intended for the support, enclosure, shelter or protection of persons, animals, chattels, or property and forming a construction that is safe and stable.

**BUILDING COVERAGE.** The land area covered by all buildings on a lot, excluding eaves.

**BUILDING HEIGHT.** The vertical distance from grade plane to the average height of the highest roof surface.

**BUILDING LINES.** The lines that are parallel to the front, side, or rear lot lines of a lot at a distance equal to the minimum setback requirements, and beyond which the vertical wall of a building or structure shall not be located closer to said lot lines.

**BUILDING, PRINCIPAL.** A building in which is conducted the principal use of the plot on which it is situated. In any residential district, the structure housing the principal use shall be deemed to be the principal building on the plot on which the same is situated. (??) seems confusing when some lots have more than one dwelling unit or dwelling unit and business structure on same lot.

**CARPORT.** Space for the housing or storage of motor vehicles and enclosed on not more than two sides by walls.

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**CEMETERY.** Land used, or intended to be used, for burial of the dead, whether human or animal, including a mausoleum, columbarium or cinerarium.

**CERTIFICATE OF OCCUPANCY.** Permission to occupy a building and/or property.

**CHURCH.** A building, together with its accessory buildings and uses, where persons regularly assemble for religious worship, and which building, together with its accessory buildings and uses, including day care facilities, is maintained and controlled by a religious body organized to sustain public worship.

**CLUB or LODGE.** An association of persons for the promotion of some nonprofit common purpose, such as charity, literature, science, politics, fellowship, and the like, meeting periodically, and limited to members.

**COLLEGE or UNIVERSITY.** An institution of higher education offering undergraduate or graduate degrees.

**COMPREHENSIVE PLAN.** The City of Tontitown 2005 Comprehensive Land Use Plan.

**CONSTRUCTION SALES AND SERVICE.** An establishment engaged in the retail or wholesale sale of materials used in the construction of buildings or other structures, as well as the outdoor storage of construction equipment or materials on lots other than construction sites. Typical uses include lumberyards, home improvement centers, lawn and garden supply stores, electrical, plumbing, air conditioning and heating supply stores, swimming pool sales, and construction and trade contractor storage yards.

**CONVENIENCE STORE.** An establishment, not exceeding 3,500 square feet of gross floor area, serving a limited market area, and engaged in the retail sale of food, beverages, gasoline and other frequently or recurrently needed merchandise for household or automotive use, and which may specifically include a car wash as an accessory use.

**COUNTRY CLUB.** A chartered, nonprofit membership club catering primarily to its membership, providing one or more of the following social and recreational activities: golf, tennis, swimming, riding, or outdoor recreation. Such clubs typically include dining facilities, clubhouses, locker rooms, and pro shops.

**DAY CARE, GENERAL (DAY CARE CENTER).** A commercial establishment where adult day care services are provided, or where child day care services are provided for more than eight children; with both such services to be provided pursuant to state laws and fire codes, and in accordance with, and licensed by appropriate state agencies.

**DAY CARE, LIMITED (DAY CARE FAMILY HOME).** A home where day care services are provided to a maximum of eight children, with a maximum of two adults in attendance. The operator shall reside in the structure, and the facility must conform to all codes and regulations, both state and local, applicable thereto, with the most restrictive regulations prevailing. The babysitting of not more than four children shall not be subject to provisions of these regulations.

**DETACHED STRUCTURE.** A structure having no party or common wall with another structure except an accessory structure.

**DEVELOPMENT.** The act of changing the state of a tract of land after its function has been

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purposefully changed by man; including, but not limited to, structures on the land and alterations to the land. Development does not include:

- (1) Lawn and yard care, including mowing, gardening, tree care, and maintenance of landscaped areas;
- (2) Removal of trees or vegetation damaged by natural forces; or
- (3) The repair, maintenance, or installation of a utility, drainage or street system that does not disturb land or increase impervious cover.

**DEVELOPMENT or SITE PLAN.** A dimensioned presentation of the proposed development of a specified parcel of land that reflects thereon the location of buildings, easements, parking arrangements, public access, and other similar and pertinent features.

**DISTRICT, ZONING.** Any portion or section of the city within which uniform zoning regulations apply.

**DRIVE-IN ESTABLISHMENT.** A facility where services or products are delivered to persons in vehicles by means of a drive-up window or carhop.

**DWELLING.** A building or portion thereof which is designed or used as living quarters for one or more families, but not including motels, boardinghouses, tourist homes, convalescent homes, travel trailers, manufactured homes, or manufactured housing.

**DWELLING, ATTACHED.** A dwelling that is joined to another dwelling at one or more sides by a wall or walls.

**DWELLING, DETACHED.** A dwelling that is entirely surrounded by open space on the same lot.

**DWELLING, MULTI-FAMILY.** A dwelling designed for or occupied by three or more families living independently of each other, exclusive of auto or trailer courts or camps, hotels, or motels.

**DWELLING, SINGLE-FAMILY.** A dwelling designed for or occupied by one family only, and being on a permanent foundation. A single-family dwelling may not have more than two adults residing in the dwelling per established bedroom and may include minor children.

**DWELLING, TWO-FAMILY (DUPLEX).** A dwelling designed for or occupied by not more than two families living independently of each other.

**DWELLING, TOWNHOUSE or ROW HOUSE.** Two or more dwelling units attached at the side or sides, each unit of which has a separate outdoor entrance and each designed to be occupied and owned by one family.

**DWELLING UNIT.** A room or group of rooms located within a dwelling and forming a single habitable unit with facilities for living, sanitation, sleeping, and cooking.

**DWELLING, ZERO LOT LINE.** A single detached dwelling unit that is constructed on a side property line of said lot, such that the wall located on the side property line should be “blank” with no openings of any type allowed.

**EFFICIENCY UNIT.** A dwelling unit that contains living, sanitation, sleeping, and cooking

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facilities, but not a separate bedroom for sleeping, for not more than two adults.

**EMERGENCY HOUSING UNIT.** A manufactured housing unit or residential-design manufactured housing unit that is located on the same lot as a principal single-family dwelling to be used solely for the purpose of providing temporary accommodations for a family member in need of daily assistance due to health reasons. Such reasons shall be certified by a licensed physician.

**FAMILY.** One or more persons related by blood, marriage or adoption, or a group of not more than five unrelated persons living together and subsisting in common as a single, non-profit housekeeping unit utilizing only one kitchen. A family may include domestic servants employed by said family. A single family dwelling may not have more than two adults residing in the dwelling per established bedroom and may include minor children.

**FARM.** A parcel of land used for the growing or raising of agricultural products, including related structures thereon.

**FENCE.** A barrier constructed to provide privacy or visual separation between one ownership and another.

**FLOODPLAIN REGULATIONS.** Provisions of the City of Tontitown Flood Damage Prevention Code.

**FLOOR AREA, GROSS.** The floor area within the inside perimeter of the exterior walls of the building under consideration, without deduction for corridors, stairways, closets, the thickness of interior walls, columns or other features. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. The gross floor area shall not include shafts with no openings or interior courts.

**FLOOR AREA, NET.** The actual occupied area, not including unoccupied accessory areas such as corridors, stairways, toilet rooms, mechanical rooms and closets.

**FREIGHT TERMINAL.** A building or area in which freight, brought by motor trucks or rail, is assembled and/or stored for routing in intrastate or interstate shipment by motor truck or rail.

**FRONTAGE.** That edge of a lot bordering a street.

**GARAGE, PRIVATE.** An accessory building or a part of a main building used for storage purposes only for automobiles, vans, pick-up trucks and the like, used solely by the occupants and their guests of the building to which it is accessory.

**GOLF COURSE.** A facility providing private or public golf recreation services and support facilities, excluding miniature golf facilities and driving ranges.

**GOVERNMENT SERVICES FACILITIES.** Buildings or facilities owned or operated by government entities and providing access to services for the public, excluding utilities and recreational services. Typical uses include administrative offices of government agencies and utility billing offices. (This is confusing)

**GREENHOUSE or NURSERY.** An establishment primarily engaged in the raising and retail

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sale of horticultural specialties such as flowers, shrubs, and trees, intended for ornamental or landscaping purposes.

**GROUP RESIDENTIAL.** The use of a site for occupancy by groups of more than five persons, not defined as a family. Typical uses include residence halls, and boarding or lodging houses.

**HAZARDOUS WASTE.** Any solid, liquid, semisolid, or gaseous waste, whether alone or in combination, whether used, reused or reclaimed, which because of its quantity, concentration, or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in mortality, or an increase in serious irreversible, or incapacitating reversible, illness, or which may pose a substantial present or potential hazard to human health or the environment.

**HOME OCCUPATION.** Any occupation or profession carried on by the inhabitants which is clearly incidental and secondary to the use of the dwelling for dwelling purposes, which does not change the character thereof, which is conducted entirely within the main building, and which meets all other applicable standards and use limitations as described herein.

**HOSPITAL.** An institution providing health services primarily for human inpatient or medical or surgical care for the sick or injured, and including related facilities such as laboratories, outpatient departments, training and research facilities, central service facilities, pharmacies, and staff offices which are an integral part of the facilities.

**HOTEL or MOTEL.** An establishment where overnight accommodations are supplied for transient guests. Typical accessory uses include dining, swimming, and meeting facilities.

**KENNEL.** The use of land or buildings for the purpose of selling, breeding, boarding, or training dogs or cats or both, or the keeping of more than five dogs and cats. The word “selling” as herein used shall not be construed to include the sale of animals three months of age or younger which are the natural increase of animals kept by persons not operating a kennel as herein defined; nor shall selling be determined to include isolated sales of animals over three months old by persons not operating a kennel as herein described.

**LIBRARY.** A publicly operated facility housing a collection of books, magazines, audio and video tapes, or other material for borrowing and use by the general public.

**LOT.** Land occupied or intended for occupancy by a use permitted in these regulations, including one main building together with its accessory building, and the open spaces and parking spaces required herein, and having its principal frontage upon a street.

**LOT, AREA.** The total horizontal area of a lot lying within the lot lines.

**LOT, CORNER.** A lot abutting two or more streets at their intersection.

**LOT, DOUBLE FRONTAGE.** A lot that is an interior lot extending from one street to another and abutting a street on two ends.

**LOT, INTERIOR.** Any lot which is not a corner lot.

**LOT LINES.** The boundary lines of a lot.

**LOT LINE, FRONT.** In the case of an interior lot, the line separating said lot from that street which is designed as the front street in the request for a building permit.

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**LOT LINE, REAR.** The lot boundary opposite and most distant from the front lot line. In the case of a pointed or irregular lot, it shall be an imaginary line parallel to and farthest from the front lot line.

**LOT LINE, SIDE.** Any lot line other than a front or rear lot line as defined herein.

**LOT OF RECORD.** A lot that is a part of a subdivision, the plat of which has been recorded in the office of the Washington County Circuit Clerk.

**LOT WIDTH.** The width of a lot measured at the front building setback line.

**MANUFACTURED HOME.** A transportable, factory-built housing unit, fabricated prior to June 15, 1976, the effective date for the Federal Manufactured Home Construction and Safety Act of 1974.

**MANUFACTURED HOUSING PARK.** A tract of land in one ownership that is used or intended to be used by two or more manufactured housing units, and which has public sanitary sewer facilities, public water, electricity, and other utilities available.

**MANUFACTURED HOUSING UNIT.** A detached single-family housing unit fabricated in an off-site manufacturing facility for installation or assembly at the building site as a permanent structure with transport features removed, bearing a seal certifying that it is built in compliance with the Federal Manufactured Housing Construction and Safety Standards Code. For purposes of these regulations, the term **MANUFACTURED HOUSING UNIT**, when used by itself, shall not mean the same as a “residential-design manufactured housing unit.”

**MANUFACTURED HOUSING UNIT, RESIDENTIAL-DESIGN.** A manufactured housing unit which has a minimum width of 24 feet, with width measured perpendicular to the longest axis at the narrowest part, a pitched roof, and siding and roofing materials which are customarily used on site-built homes, and which complies with all of the standards specified herein.

**MANUFACTURING, GENERAL.** An establishment engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment and packaging of such products, and incidental storage, sales, and distribution of such products, but excluding “basic industry.”

**MANUFACTURING, LIMITED.** An establishment primarily engaged in the on-site production of goods by hand-manufacturing, which generally involves only the use of hand tools or other equipment not exceeding two horsepower, which may include assembly and packaging, as well as incidental, direct sales to consumers of those goods produced on-site.

**MEDICAL SERVICE.** An establishment providing therapeutic, preventative, or corrective personal treatment services on an out-patient basis by physicians, dentists, and other licensed practitioners, as well as the provision of medical testing and analysis services.

**MINING or QUARRYING.** The extraction of metallic and nonmetallic minerals, including stone, sand, and gravel operations.

**NONCONFORMING STRUCTURE.** A structure, or portion thereof, lawfully existing at the time these regulations became effective, or as amended, which does not comply with the setback, height, or other development standards applicable in the district in which the structure is located.

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**NONCONFORMING USE.** Any structure or land lawfully occupied by a use at the time these regulations, or any amendment thereto, became effective, which does not conform to the use or area regulations of the district within which it is located.

**NURSING HOME.** Any premises where more than three persons are housed and furnished with meals and continuing nursing services.

**OFFICE, GENERAL.** An establishment providing executive, management, administrative or professional services, but not involving medical or dental services or the sale of merchandise, except as incidental to a permitted use. Typical uses include real estate, insurance, property management, investment, employment, travel, advertising, law, architecture, design, engineering, accounting and similar offices.

**OPEN SPACE, COMMON.** The area of land that is designed to be accessible for the use and enjoyment of all owners and/or tenants. This space may contain complementary structures, recreational areas and other such improvements, but shall not include parking lots or streets.

**OPEN SPACE, PRIVATE.** An area of land owned or occupied by a property owner or tenant and available for his or her private use and enjoyment.

**OWNER.** The property owner of record, according to the office of the Washington County Circuit Clerk.

**PARKING, COMMERCIAL.** A paved area for off-street parking of operable motor vehicles on a temporary basis, other than as accessory parking to a principal use.

**PARKS AND RECREATION.** A park, playground, open space, or facility, open to the general public and reserved for active or passive recreational activities.

**PEDESTRIAN WAY.** A separate right-of-way dedicated to or reserved for public use by pedestrians, which crosses blocks or other tracts of land to facilitate pedestrian access to adjacent streets and properties.

**PRINCIPAL BUILDING.** The building on a lot in which the principal use of the lot is conducted.

**PRINCIPAL USE.** The chief or main recognized use of a structure or of land.

**RECREATION AND ENTERTAINMENT, INDOOR.** An establishment offering recreation, entertainment or games of skill to the general public for a fee or charge, and that is wholly enclosed in a building. Typical uses include bowling alleys, indoor theaters, pool halls and video game arcades.

**RECREATION AND ENTERTAINMENT, OUTDOOR.** An establishment offering recreation, entertainment or games of skill to the general public for a fee or charge, wherein any portion of the activity takes place in the open. Typical uses include archery ranges, batting cages, golf driving ranges, and miniature golf courses.

**RECREATIONAL VEHICLE PARK.** The use of a site providing individual spaces for towed or self-propelled camping vehicles on a daily fee or short-term rental basis.

**RESEARCH SERVICE.** An establishment engaged in conducting basic and applied research, including production of prototype products when limited to the minimum scale necessary for full

