

**CITY OF CODY
PLANNING, ZONING AND ADJUSTMENT BOARD
STAFF REPORT**

MEETING DATE:	MARCH 14, 2023	TYPE OF ACTION NEEDED	
AGENDA ITEM:		P&Z BOARD APPROVAL:	
SUBJECT:	PROPOSED AMENDMENTS TO THE OPEN BUSINESS/LIGHT INDUSTRIAL (D-3), INDUSTRIAL (E), AND HEAVY INDUSTRIAL (HI) ZONING DISTRICTS.	RECOMMENDATION TO COUNCIL:	X
PREPARED BY:	TODD STOWELL, CITY PLANNER	DISCUSSION ONLY:	

INTRODUCTION:

The Planning and Zoning Board members were introduced to the proposed amendments at their last meeting and, after conducting a preliminary review, directed staff to advertise the public review process. The public review process was advertised in the newspaper on March 7th and on the City website. Comments may be submitted in writing, or at the March 14th Planning and Zoning Board and April 4th Council meetings. In addition, a direct automated call was made to everyone that has a utility account for the industrial areas along Road 2AB, Mountain View Drive, and the Stampede grounds (provided they have their phone number listed), as these areas have the most potential to be affected by the amendments.

As noted for the last meeting, the proposed amendments address three main topics. The first is to fix some language in the Open Business/Light Industrial (D-3) and Industrial (E) chapters that relates to whether a use can include the storage or handling of hazardous materials. The proposed language better defines and limits the hazardous materials restriction to "bulk" storage and handling situations, so that retail amounts are not precluded. In the D-3 zone, those uses that involve the bulk storage or handling of hazardous materials would continue to be prohibited, while in the Industrial E zone they would be classified as "conditional uses". The Heavy Industrial zone would not have the restriction at all. The building code has a clear distinction between the two categories, so that is the method used by reference in the proposed zoning ordinance language. The referenced citation in the proposed code contains a link that goes directly to the online building code, and is also provided here: [Section 307.1](#).

Staff drafted the proposed amendment related to hazardous materials in an attempt to resolve the poor language that has plagued us in the past, and to structure the permitted/unpermitted determination and level of review based on the intended intensity of each zone. There are relatively few existing businesses in the City that would fall within the bulk storage category, and while many are located in an Industrial

or Heavy Industrial zone, there are a few in the D-3 zone. Those few in the D-3 zone would be non-conforming with the proposed language, although technically they are already non-conforming with the existing language.

The second topic is to add a provision related to environmental impacts of uses to each of the three industrial zones. The proposed language would require a use that is otherwise permitted in the zone to be classified as a "conditional use" if the proposed use involves regular and ongoing air quality, odor, or groundwater quality impacts.

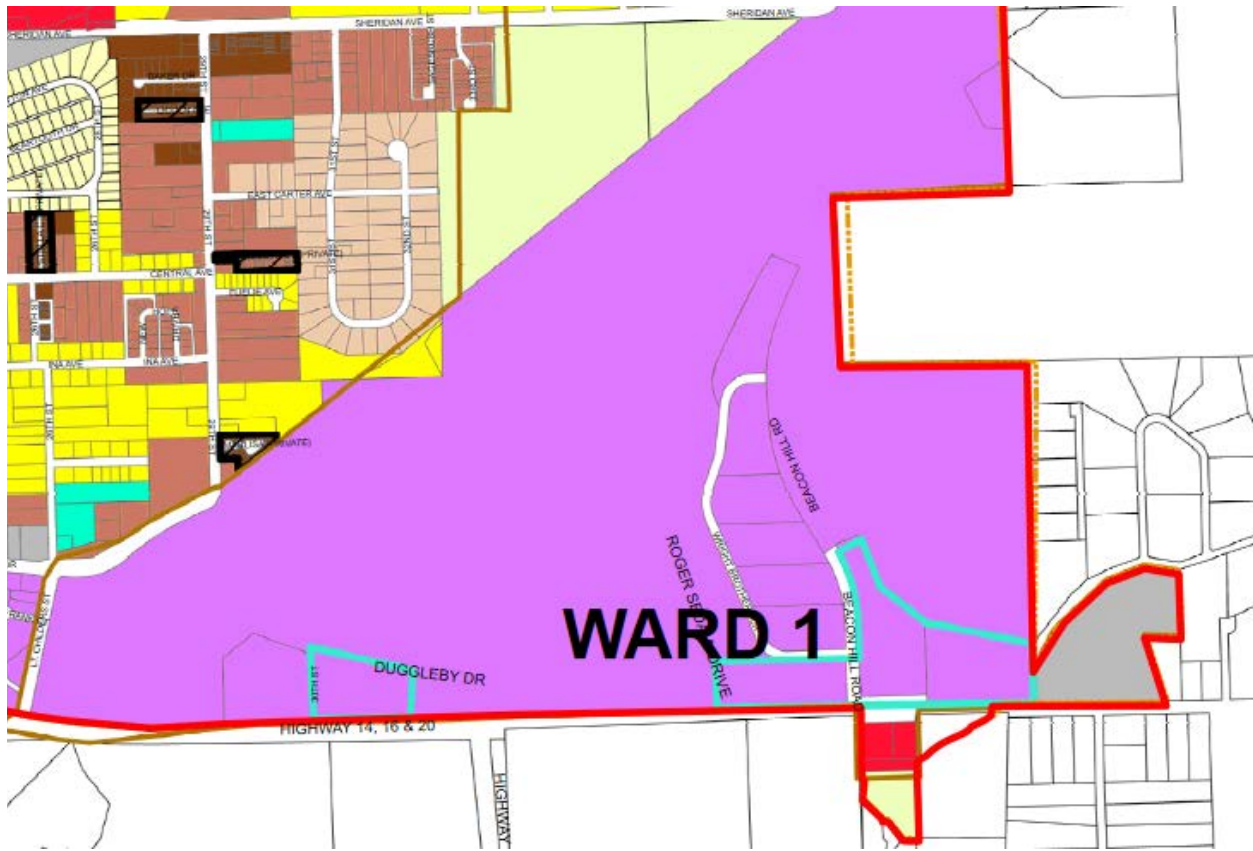
Staff drafted this proposed language based on the concept that a conditional use review requires neighbor notice and a public hearing, which allows opportunity for neighbor review and input in the permitting process. The conditional use review also provides increased authority for the City to require mitigation of the listed environmental impacts. In particular, staff is concerned that the "anything goes" nature of the industrial zoning districts could result in significant adverse environmental impacts to large portions of the community, if we do not adopt a more structured method to address those listed impacts.

Based on the discussion at last meeting, there were some wording changes to this section, which are highlighted below.

*B. Uses listed under 10-10C-2(B) and (C) that are anticipated to have regular and ongoing air quality, odor, or groundwater quality impacts, shall be deemed Conditional Uses, subject to the provisions of section 10-14-1, Conditional Uses. For purposes of this provision, regular and ongoing, shall mean a component of the use that occurs as part of the normal operational activities on the property. Air quality impact shall mean any situation that triggers a WY DEQ air quality **operating** permit, or that involves the airborne discharge of heat, fumes, spray, gas or smoke in such quantities so as to be irritating or injurious to the health or safety of persons or properties located outside of the site boundaries. Odor impact shall include any substance that **is anticipated to travel beyond the site boundary and cause a smell easily distinguished by occupants of other properties**, other than resulting from the operation of a motor vehicle.*

Groundwater quality shall mean any potential contamination to groundwater, other than registered and permitted stormwater facilities permitted by WY DEQ and/or pursuant to the City of Cody Stormwater Management Policy.

A third topic, clarifies that development on airport land still requires a general site plan review, even if it qualifies for an exemption to the architectural and landscaping plan review. Site plan review considers grading, drainage, utilities, access, parking, lighting, etcetera, and is still applicable. Also, language is added to note that the airport architectural and landscaping plan exemption is not applicable if the project is located in an Entry Corridor Overlay zone, or if it involves development for non-airport/non-aviation purposes. The Entry Corridor Overlay in the area of the airport is shown below with the bright blue lines.



A final change, found in 10-10C-2(C) simply corrects the code reference and name of the process required if one of the specified uses is located in the airport overlay.

All proposed amendments are shown in the attached documents using “track changes” in a blue color.

RECOMMENDED MOTION:

After considering all public comments, further reviewing the proposed language, and making any further modifications, recommend adoption of the amendments to the City Council.

ATTACHMENTS:

Proposed amendments to Title 10, Chapter 10, Article C (D-3 zone), Article E (E zone), and Article F (HI zone).

ARTICLE C. OPEN BUSINESS/LIGHT INDUSTRIAL D-3 DISTRICTS
SECTION:

10-10C-1: PURPOSE AND INTENT:

It is the intent that the Open Business/Light Industrial D-3 District shall provide a zone for the conduct of commercial and business services not permitted within the D-2 Zone, and certain small light industrial uses. (1960 Compilation § 26-109; amd. Ord. 78-19; Ord. 80-20; Ord. 82-29; Ord. 87-3; Ord. 89-15; Ord. 91-2; Ord. 93-8; Ord. 97-15)

10-10C-2: USES PERMITTED:

No building or land shall be used and no building shall be erected or structurally altered within an Open Business/Light Industrial (D-3) District unless otherwise permitted herein, except for one (1) or more of the following uses:

A. Any use permitted in the D-2 District.

B. Subject to 10-10C-3, A animal boarding kennels; boat building and repairs; cabinet shops; cleaning plants; cosmetic manufacturing; dairy product processing; heavy equipment sales and storage; livestock feed sales (no processing or manufacturing); contractor yards; animal hospitals; taxidermist shops; wireless communication facilities. Other similar uses may be permitted.

C. Subject to 10-1C-3, D drive-in theaters; manufacturing of electronic components, instruments, jewelry, games, toys and pharmaceuticals; cold storage plants, meat processing plants, motion picture production studios, and furniture manufacturing or assembly facilities; provided, however, such uses in an area lying within the Airport Overlay Zone shall be subject to section 10-14-3, "Airport Overlay Special Use Permits" ~~10-10C-6, "Conditional Uses"~~, of this article. (1960 Compilation § 26-109; amd. Ord. 78-19; Ord. 80-20; Ord. 82-29; Ord. 87-3; Ord. 89-15; Ord. 91-2; Ord. 93-8; Ord. 97-15; Ord. 2017-10, 4-13-2017)

10-10C-3: PROHIBITED AND CONDITIONAL USES:

A. Uses and accessory uses specifically prohibited within a D-3 District ~~are include~~ grain elevators; and, the bulk storage and/or handling of explosives, caustics, oxidizers, unstable flammable liquids, toxic or hazardous materials or substances. For the purposes of this provision, "bulk" shall mean quantities of such hazardous materials that would cause the activity to be classified as a "High Hazard Group H Occupancy", pursuant to the International Building Code (see IBC Section 307.1). (1960 Compilation § 26-109; amd. Ord. 78-19; Ord. 80-20; Ord. 82-29; Ord. 87-3; Ord. 89-15; Ord. 91-2; Ord. 93-8; Ord. 97-15)

B. Uses listed under 10-10C-2(B) and (C) that are anticipated to have regular and ongoing air quality, odor, or groundwater quality impacts, shall be deemed Conditional Uses, subject to the provisions of section 10-14-1, Conditional Uses. For purposes of this provision, regular and ongoing, shall mean a component of the use that occurs as part of the normal operational activities on the property. Air quality impact shall mean any situation that triggers a WY DEQ air quality operating permit, or that involves the airborne discharge of heat, fumes, spray, gas or smoke in such quantities so as to be irritating or injurious to the health or safety of persons or properties located outside of the site boundaries. Odor impact shall include any substance that is anticipated to travel beyond the site boundary and cause a smell easily distinguished by occupants of other properties, other than resulting

from the operation of a motor vehicle. Groundwater quality shall mean any potential contamination to groundwater, other than registered and permitted stormwater facilities permitted by WY DEQ and/or pursuant to the City of Cody Stormwater Management Policy.

10-10C-4: BUFFER ZONE:

Where any business or commercial district is adjacent to any residential district, there shall be provided on the business or commercial district a buffer zone with a visual screen. (1960 Compilation § 26-109; amd. Ord. 78-19; Ord. 80-20; Ord. 82-29; Ord. 87-3; Ord. 89-15; Ord. 91-2; Ord. 93-8; Ord. 97-15)

10-10C-5: ARCHITECTURE AND LANDSCAPING:

All structures within the district shall be architecturally compatible. Architectural and landscaping plans shall be submitted to the Planning and Zoning Commission for approval. Architectural and landscaping details shall be maintained as shown by the approved plans. (1960 Compilation § 26-109; amd. Ord. 78-19; Ord. 80-20; Ord. 82-29; Ord. 87-3; Ord. 89-15; Ord. 91-2; Ord. 93-8; Ord. 97-15)

~~10-10C-6: CONDITIONAL USES:~~

~~In accordance with chapter 14 of this title, the following uses shall be allowed only with the approval of a conditional use permit for all area lying within the Airport Overlay Zone: Drive-in theaters; manufacturing of electronic components, instruments, jewelry, games, toys, and pharmaceuticals; cold storage plant; meat processing plant; motion picture production studio; furniture manufacturing or assembly facilities; and other similar uses. (1960 Compilation § 26-109; amd. Ord. 78-19; Ord. 80-20; Ord. 82-29; Ord. 87-3; Ord. 89-15; Ord. 91-2; Ord. 93-8; Ord. 97-15)~~

ARTICLE E. INDUSTRIAL E DISTRICTS

10-10E-1: USES PERMITTED:

No building or land shall be used and no building erected or structurally altered within an Industrial E District unless otherwise permitted herein, except for ~~one (1) or more of~~ the following uses:

- A. Subject to 10-10E-2, ~~A~~any use permitted in the D-3 Districts under 10-10C-2, except residential uses.
- B. Subject to 10-10E-2, ~~A~~airports; feed manufacturing; pressure treating of wood products; wireless communication facilities; ~~and, O~~other similar uses, not herein named, that are not more objectionable or hazardous ~~may be permitted~~.

~~Certain uses, otherwise permitted in this zone, are prohibited in the Airport Overlay Zone: towers, stable flammable liquid storage and liquefied petroleum gas storage.~~ (1960 Compilation § 26-110; amd. Ord. 80-20; Ord. 82-29; Ord. 87-3; Ord. 93-8; Ord. 99-2; Ord. 2017-10, 4-13-2017)

10-10E-2: ~~PROHIBITED-CONDITIONAL~~ USES:

- A. Use ~~is~~ and accessory uses which include specifically prohibited within an E District for the bulk storage and/or handling of explosives, caustics, oxidizers, unstable flammable liquids, or toxic or hazardous materials or substances, shall be deemed Conditional Uses, subject to the provisions of section 10-4-1, Conditional Uses. For the purposes of this provision, “bulk” shall mean quantities of such hazardous materials that would cause the activity to be classified as a “High Hazard Group H Occupancy”, pursuant to the International Building Code (see IBC Section 307.1). (1960 Compilation § 26-110; amd. Ord. 80-20; Ord. 82-29; Ord. 87-3; Ord. 93-8; Ord. 99-2)
- B. Uses listed under 10-10E-1 that are anticipated to have regular and ongoing air quality, odor, or groundwater quality impacts, shall be deemed Conditional Uses, subject to the provisions of section 10-14-1, Conditional Uses. For purposes of this provision, regular and ongoing, shall mean a component of the use that occurs as part of the normal operational activities on the property. Air quality impact shall mean any situation that triggers a WY DEQ air quality operating permit, or that involves the airborne discharge of heat, fumes, spray, gas or smoke in such quantities so as to be irritating or injurious to the health or safety of persons or properties located outside of the site boundaries. Odor impact shall include any substance that is anticipated to travel beyond the site boundary and cause a smell easily distinguished by occupants of other properties, other than those resulting from the operation of a motor vehicle. Groundwater quality shall mean any potential contamination to groundwater, other than registered and permitted stormwater facilities permitted by WY DEQ and/or installed pursuant to the City of Cody Stormwater Management Policy.

10-10E-3: ARCHITECTURE AND LANDSCAPING:

All structures within the district shall be architecturally compatible. Architectural and landscaping plans shall be submitted to the Planning and Zoning Commission for approval. Architectural and landscaping details shall be maintained as shown by the approved plans; ~~p~~Provided, ~~however~~, this section shall not apply to any property situated within the boundaries of

the Yellowstone Regional Airport (YRA) that will be utilized by the airport, or their lessee, primarily for airport operations and/or aviation purposes (e.g. terminal, hangers, flight instruction services), unless located within an Entry Corridor Overlay zone. This exemption to the architectural and landscaping plan review does not supersede the site plan review required pursuant to section 9-2-3, or other reviews required pursuant to this code (e.g., parking plans). (1960 Compilation § 26-110; amd. Ord. 80-20; Ord. 82-29, Ord. 87-3; Ord. 93-8; Ord. 99-2)

ARTICLE F. HEAVY INDUSTRIAL DISTRICTS

10-10F-1: PURPOSE:

The purpose of the Heavy Industrial Zoning District is to maintain and preserve an area for intensive industrial uses that are best operated in isolation from other less intensive land uses, due to potential environmental hazards and/or production of odors, dust, noise, vibration, heavy truck traffic or other impacts detectable beyond the property. Industrial uses include, but are not limited to, those that produce goods from extracted and raw materials or from recyclable or previously prepared materials, including the design, storage, and handling of these products and the materials from which they are produced. (Ord. 2013-18, 1-21-2014)

10-10F-2: PERMITTED AND CONDITIONAL USES:

A. Permitted Uses: The permitted uses in the Heavy Industrial Zoning District are:

1. Subject to 10-10F-2(B), ~~A~~all uses permitted in the D-3 Zoning District; except residential uses, lodging facilities, healthcare facilities, and public schools.
 2. Caretaker/watchmen living quarters when accessory to and within an industrial or commercial building.
 3. Subject to 10-10F-2(B), ~~I~~ntensive industrial uses, including, but not limited to: ammunition manufacturing, asphalt plants, bulk storage tanks and stockpiles, concrete plants, explosive manufacturing and storage, feed and fertilizer manufacturing, manufacturing of gypsum products, hazardous material storage and handling, hazardous waste recycling and treatment (not disposal), industrial and commercial composting, pharmaceutical manufacturing plants, railroad and freight terminals, recycling processing plants, refineries, rock quarrying and processing, sewage treatment plants and lagoons, slaughterhouses ~~(see also title 4, chapter 5 of this Code)~~, solid waste transfer stations, wrecking yards, and uses determined by the Planning and Zoning Board to be similar in character and intensity.
 4. Motorized vehicle racing tracks.
 5. Subject to 10-10F-2(B), ~~O~~il field services and other mining related industries.
 6. Sexually oriented businesses, subject to all regulations set forth in title 3, chapter 6 of this Code.
- ~~Wireless communication facilities~~. (Ord. 2013-18, 1-21-2014; amd. Ord. 2017-10, 4-13-2017)

B. Conditional Uses: Uses listed under 10-10F-2(A) that are anticipated to have regular and ongoing air quality, odor, or groundwater quality impacts, shall be deemed Conditional Uses, subject to the provisions of section 10-14-1, Conditional Uses. For purposes of this provision, regular and ongoing, shall mean a component of the use that occurs as part of the normal operational activities on the property. Air quality impact shall mean any situation that triggers a WY DEQ air quality operating permit, or that involves the airborne discharge of heat, fumes, spray, gas or smoke in such quantities so as to be irritating or injurious to the health or safety of persons or properties located outside of the site boundaries. Odor impact shall include any substance that is anticipated to travel beyond the site boundary and cause a smell easily distinguished by occupants of other properties, other than those resulting from the operation of a motor vehicle. Groundwater quality shall mean any potential contamination to groundwater, other than registered and permitted stormwater facilities

[permitted by WY DEQ and/or installed pursuant to the City of Cody Stormwater Management Policy.](#)

10-10F-3: MINIMUM DISTRICT SIZE:

The minimum size of any Heavy Industrial Zoning District shall be twenty (20) contiguous acres. (Ord. 2013-18, 1-21-2014)

10-10F-4: MINIMUM LOT SIZE:

There is no minimum lot size in the Heavy Industrial Zoning District. (Ord. 2013-18, 1-21-2014)

10-10F-5: HEIGHT LIMITATION:

Maximum building and structure height is one hundred feet (100'), with any exception to be considered through the special exemption process. (Ord. 2013-18, 1-21-2014)

10-10F-6: YARDS:

Each building and structure shall observe the following minimum setbacks:

- A. Setback from public streets: Twenty five feet (25') from the street right-of-way.
- B. Interior property lines: Zero feet (0'), but not on or across lot lines.
- C. Abutting Residential Zoning Districts (AA, A, B, C, F-1, F-2, RR and County R-H): Twenty five feet (25'). (Ord. 2013-18, 1-21-2014)

10-10F-7: BUFFER ZONE:

When development occurs in the Heavy Industrial Zoning District adjacent to a Residential District (AA, A, B, C, F-1, F-2, RR and County R-H) there shall be provided on the heavy industrial property along such residential district a buffer zone with a visual screen; provided the Planning and Zoning Board may waive such requirement, or portion thereof, when they determine the buffer and/or visual screen will not be effective due to topographic features between the proposed use and adjacent residential area. (Ord. 2013-18, 1-21-2014)

10-10F-8: DISTRICT REGULATIONS:

Uses established or conducted within this district shall comply with the following standards:

- A. Compliance With State, Federal And Local Requirements: Evidence of compliance with applicable State, Federal, and Local permitting requirements shall be provided with all applications for new or expanded intensive industrial uses in the following manner. An outline of necessary State, Federal, and Local permits for the proposed use and the status of those applications shall be provided by the applicant for the Planning and Zoning Board site plan review outlined in section [10-10F-9](#) of this article. Potential permits will typically relate to air quality, stormwater, and hazardous waste storage and handling. All such required permits shall be obtained prior to issuance of a certificate of occupancy, or as otherwise directed by the Planning and Zoning Board.
- B. Emergency Response Plans: All intensive industrial uses shall submit emergency response plans to the Park County Fire Marshal for review and approval prior to receiving a certificate of occupancy and conducting such operations.
- C. Sound Level: The day-night average sound level (Ldn), measured at the property line, shall not exceed fifty five (55) decibels (dB) where the adjacent property is zoned residential (AA, A,

B, C, F-1, F-2, RR, and County R-H) or sixty five (65) decibels (dB) where the adjacent property is zoned commercial, industrial, or agricultural; provided, the board may authorize a louder threshold when a sound easement is granted by the owner(s) of the property where the sound threshold would be exceeded. The board may require sound testing to verify compliance at the time a new or expanded use is established.

D. Landscaping And Screening: New uses, and existing uses which expand in building size or outdoor use area by more than fifty percent (50%), shall be provided with landscaping near the entrance to the property and/or building and along any collector or arterial street frontage, in the following manner:

1. Provide a landscaped area at least two hundred (200) square feet in size near the property entrance and/or building and include vegetation such as decorative grasses, planted trees, shrubs, flowers, lawn, or ground cover. Incorporating the business signage into the landscaped area is encouraged.

2. Provide landscaping along any collector or arterial street frontage, consisting of a minimum of one (1) tree per fifty (50) linear feet of such frontage (rounded to the nearest whole number) and decorative rock or ground cover at each tree. Provided, the Planning and Zoning Board may consider alternative landscaping methods when tree placement cannot occur due to the restrictions of title 7, chapter 4 of this Code.

3. Required landscaped areas shall be watered and maintained, with replacement of dead vegetation as needed so that at least ninety percent (90%) of the trees and ninety percent (90%) of the other landscape vegetation initially required are living.

E. Height Of Open Storage: Storage of materials outside of buildings or containers shall be no higher than eight feet (8') plus one foot (1') in height for every additional two feet (2') of setback from a property line.

F. View Obscuring Barriers: When the use of the property is a wrecking yard or similar use that stockpiles scrap or junk materials, site screening fences up to eight feet (8') tall and/or additional landscaping sufficient to form a view obscuring barrier shall be provided to screen those activities from major roads and residential areas. (Ord. 2013-18, 1-21-2014)

10-10F-9: SITE PLAN REVIEW:

As required by this Code, all new or expanded development in the Heavy Industrial Zoning District shall be subject to site plan review by the Planning, Zoning, and Adjustment Board prior to issuance of any building permit or establishment of such use. [If a conditional use permit review is required, the site plan review shall be combined with the conditional use permit process.](#) The board shall review the site plan for the following:

A. Compliance with the specific provisions of this title.

B. General site plan conditions and layout, including access and traffic flow (as related to public safety), commercial signage, parking, landscaping, lighting, site grading, stormwater facilities, and utilities. Consideration of adjacent uses shall be made in respect to the location of specific activities within the site, so as to reduce any potential conflicts from odors, dust, noise, vibration, glare, visual impacts, and stormwater runoff.

C. Assurance of compliance with applicable State and Federal safety and environmental standards pertaining to hazardous materials.

The board may specify conditions as necessary to ensure compliance with applicable standards. The issuance of a development permit shall be contingent upon the applicant receiving an

affirmative vote from the majority of the board that the applicant has satisfied the above requirements. (Ord. 2013-18, 1-21-2014)