

ARTICLE 12 ADMINISTRATION AND ENFORCEMENT

Section 12.10 Zoning Administrator Duties

- a) **Deputy Administrator** - Where the provisions of this Ordinance authorize or direct the Zoning Administrator to perform any act or carry out any function, this act or function may also be carried out by a deputy or deputies designated by the City Manager.
- b) **Basic Duties** - The Zoning Administrator shall have the power to grant certificates of zoning compliance and to make inspections of premises necessary to carry out his/her duties in the enforcement of this Ordinance, and to otherwise carry out the duties assigned herein.
- c) **Official Zoning Map** - The Zoning Administrator shall be responsible for maintaining the Official Zoning Map.
- d) **Violations** - The Zoning Administrator shall order discontinuance of illegal uses of land, buildings, or structures; removal of illegal buildings or structures; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with, or prevent violations of its provisions.

Section 12.20 Zoning Ordinance Amendments, Initiation

- a) **Timeframe for Application Submittal** - All applications for amendments to the Zoning Ordinance shall be submitted to the Zoning Administrator at least twenty-one (21) days prior to the first consideration by the City Planning Commission.
- b) **Initiation of Amendments and Application Requirements** - Requests for amendments to the Zoning Ordinance may be initiated in writing by the owner of the property requested for rezoning, or his/her authorized representative. Requests may also be made by the City Planning Commission or the City Council through official action of the Commission or Council taken at a public meeting which has been properly noticed as required by law.

In the case of an amendment requested by a property owner or his/her authorized representative, the request shall include the following:

- 1) Completion of a Zoning Amendment Application as provided by the Zoning Administrator. The application shall include:
 - a. The name and address of the person making the request and all persons having a legal or equitable interest in any land which is requested to be rezoned.
 - b. In the case of a text amendment, the specific section to be amended and the proposed text change.

- c. If the requested amendment requires a change in the zoning map, the common address, legal description or property identification number (as assigned by Ottawa County) of the area requested for change, and present and proposed district classifications shall be provided. The applicant shall also indicate by map form, the location of the property requested for rezoning. Twelve (12) copies of the map shall accompany the original application. [Ordinance No. 265, 10/4/2010]

If, in the opinion of the Zoning Administrator, Planning Commission, or City Council, the information submitted does not provide a clear delineation of the specific area to be rezoned, the Zoning Administrator, Planning Commission, or City Council shall require the applicant to submit a boundary survey of the property in question. The survey shall include a written legal description and drawing of the area to be rezoned. The boundary survey, including legal description and map, shall be completed by a Land Surveyor registered by the State of Michigan. Twelve (12) copies of the boundary survey shall be provided.

- d. The nature of the amendment shall be fully identified in writing.
- e. Payment of all fees as required by the City of Ferrysburg.

Section 12.30 Amendment Procedure

After submission of the application and fee, amendments to this Ordinance shall be processed as provided for in the Zoning Act.

Section 12.40 Consideration of Amendment

The following guidelines shall be used by the Planning Commission and City Council pursuant to consideration of amendments to the Zoning Ordinance:

- a) **Text Amendment.**
 - 1) As applicable, the amendment shall be consistent with the City Master Plan.
 - 2) In the event the amendment will add a use to a district, this use shall be fully consistent with the character of the range of uses provided for within the district.
 - 3) The amendment shall not result in problems of incompatibility among land uses within a zoning district, or among adjacent districts.
 - 4) As applicable, the proposed change shall be consistent with the City's ability to provide adequate public facilities and services.
 - 5) The proposed change shall be consistent with the public health, safety, and welfare.
- b) **Map Amendment.**
 - 1) The change shall be consistent with the City Master Plan.

- 2) The range of uses permitted by the proposed change shall be consistent with the character of the area.
- 3) The existing or planned infrastructure including streets, sanitary sewers, storm sewer, sidewalks, and street lighting shall have sufficient capacity to support those uses provided for within the proposed zoning district classification.
- 4) Existing City facilities and services including, but not limited to, police and fire protection, recreational facilities, educational facilities, and waste collection shall have sufficient capacity to support those uses provided for within the proposed zoning district classification.
- 5) The proposed change shall not result in the economic decline of adjoining property values.
- 6) The proposed change shall be governed by sufficient standards to ensure that the potential for problems of incompatibility between the proposed and adjoining districts shall be minimal.
- 7) The proposed change shall not endanger the public health, safety, or welfare.

Section 12.50 Conditional Rezoning

a) **Intent.**

It is recognized that there are certain instances where it would be in the best interests of the City, as well as advantageous to property owners seeking a change in zoning boundaries, if certain conditions could be proposed by property owners as part of a request for a rezoning. It is the intent of this Section to provide a process consistent with the provisions of Section 405 of the Michigan Zoning Enabling Act (MCL125.3405) by which an owner seeking a rezoning may voluntarily propose conditions regarding the use and/or development of land as part of the rezoning request.

b) **Application and Offer of Conditions.**

- 1) An owner of land may voluntarily offer in writing conditions relating to the use and/or development of land for which a rezoning is requested. This offer may be made either at the time the application for rezoning is filed or may be made at a later time during the rezoning process.
- 2) The required application and process for considering a rezoning request with conditions shall be the same as that for considering rezoning requests made without any offer of conditions, except as modified by the requirements of this Section.
- 3) The owner's offer of conditions may not purport to authorize uses or developments not permitted in the requested new zoning district.
- 4) The owner's offer of conditions shall bear a reasonable and rational relationship to the property for which rezoning is requested.
- 5) Any use or development proposed as part of an offer of conditions that would require a special land use permit under the terms of this Ordinance may only be

commenced if a special land use permit for the use or development is ultimately granted in accordance with the provisions of this Ordinance.

- 6) Any use or development proposed as part of an offer of conditions that would require a variance under the terms of this Ordinance may only be commenced if a variance for the use or development is ultimately granted by the Zoning Board of Appeals in accordance with the provisions of this Ordinance.
- 7) Any use or development proposed as part of an offer of conditions that would require site plan approval under the terms of this Ordinance may only be commenced if site plan approval for the use or development is ultimately granted in accordance with the provisions of this Ordinance.
- 8) The offer of conditions may be amended during the process of rezoning consideration provided that any amended or additional conditions are entered voluntarily by the owner. An owner may withdraw all or part of its offer of conditions any time prior to final rezoning action of the City Council provided that, if the withdrawal occurs subsequent to the Planning Commission's public hearing on the original rezoning request, then the rezoning application shall be referred to the Planning Commission for a new public hearing, with appropriate notice and a new recommendation.

c) **Planning Commission Review.**

The Planning Commission, after public hearing in accordance with the Zoning Act and consideration of the factors for rezoning set forth in Section 12.40, may recommend approval or denial of the rezoning. The Planning Commission's deliberations shall include, but not be limited to, a consideration of the factors for rezoning set forth in Section 12.40. Should the recommendation be for denial, the Planning Commission may informally communicate to the applicant any conditions that may be considered necessary for the Planning Commission to recommend approval; however, this communication shall not be considered a tacit approval. Any changes to the offer of conditions must be acceptable to and voluntarily offered by the owner.

d) **City Council Review.**

- 1) After receipt of the Planning Commission's recommendation, the City Council shall deliberate upon the requested rezoning and may approve or deny the conditional rezoning request. The City Council's deliberations shall include, but not be limited to, a consideration of the factors for rezoning set forth in Section 12.40.
- 2) Should the City Council consider amendments to the proposed conditional rezoning that have been offered by the owner but were not part of the offer of conditions as recommended by the Planning Commission, then the City Council shall refer the amendments to the Planning Commission for a report and recommendation thereon within a time specified by the City Council and proceed thereafter in accordance with the Zoning Act to deny or approve the conditional rezoning with or without amendments.
- 3) The City Council may, at its own discretion, determine that the amendments are different enough from those considered by the Planning Commission at the public

hearing so that a new public hearing before the Planning Commission shall be required, followed by a new recommendation.

e) **Approval.**

- 1) If the City Council finds the rezoning request and offer of conditions acceptable, the offered conditions shall be incorporated into a formal written Statement of Conditions acceptable to the owner and conforming to the provisions of this Section. The Statement of Conditions shall be incorporated by attachment to the ordinance adopted by the City Council to accomplish the requested rezoning.
- 2) The Statement of Conditions shall:
 - a. Be in a form recordable with the Register of Deeds of Ottawa County or, in the alternative, be accompanied by a recordable Affidavit or Memorandum prepared and signed by the owner giving notice of the Statement of Conditions in a manner acceptable to the City Council.
 - b. Contain a legal description of the land to which it pertains.
 - c. Contain a statement acknowledging that the Statement of Conditions runs with the land and is binding upon successor owners of the land.
 - d. Incorporate by attachment or reference any diagram, plans or other documents submitted or approved by the owner that are necessary to illustrate the implementation of the Statement of Conditions. If any documents are incorporated by reference, the reference shall specify where the document may be examined.
 - e. Contain a statement acknowledging that the Statement of Conditions or an Affidavit or Memorandum giving notice thereof may be recorded by the City with the Register of Deeds of Ottawa County.
 - f. Contain the notarized signatures of all of the owners of the subject land preceded by a statement attesting to the fact that they voluntarily offer and consent to the provisions contained within the Statement of Conditions.
- 3) Upon the rezoning taking effect, the Zoning Map shall be amended to reflect the new zoning classification along with a designation that the land was rezoned with a Statement of Conditions. The City Clerk shall maintain a listing of all lands rezoned with a Statement of Conditions.
- 4) The approved Statement of Conditions or an Affidavit or Memorandum giving notice thereof shall be filed by the City with the Register of Deeds of Ottawa County. The City Council shall have authority to waive this requirement if it determines that, given the nature of the conditions and/or the time frame within which the conditions are to be satisfied, the recording of such a document would be of no material benefit to the City or to any subsequent owner of the land.
- 5) Upon the rezoning taking effect, the use of the land so rezoned shall conform thereafter to all of the requirements regulating use and development within the new zoning district as modified by any more restrictive provisions contained in the Statement of Conditions.

f) **Compliance with Conditions.**

- 1) Any person who establishes a development or commences a use upon land that has been rezoned with conditions shall continuously operate and maintain the development or use in compliance with all of the conditions set forth in the Statement of Conditions. Any failure to comply with a condition contained within the Statement of Conditions shall constitute a violation of this Zoning Ordinance and be punishable accordingly. Additionally, any violation shall be deemed a nuisance per se and subject to judicial abatement as provided by law.
- 2) No permit or approval shall be granted under this Ordinance for any use or development that is contrary to an applicable Statement of Conditions.

g) **Time Period for Establishing Development or Use.**

Unless another time period is specified in the ordinance rezoning the subject land, the approved development and/or use of the land pursuant to building and other required permits must be commenced upon the land within 18 months after the rezoning took effect and thereafter proceed diligently to completion. This time limitation may upon written request be extended by the City Council if both of the following apply:

- 1) It is demonstrated to the City Council's reasonable satisfaction that there is a strong likelihood that the development and/or use will commence within the period of extension and proceed diligently thereafter to completion and
- 2) The City Council finds that there has not been a change in circumstances that would render the current zoning with Statement of Conditions incompatible with other zones and uses in the surrounding area or otherwise inconsistent with sound zoning policy.

h) **Reversion of Zoning.**

If approved development and/or use of the rezoned land does not occur within the time frame specified under Subsection G above, then the land shall revert to its former zoning classification as set forth in MCL 125.3405. The reversion process shall be initiated by the City Council requesting that the Planning Commission proceed with consideration of rezoning of the land to its former zoning classification. The procedure for considering and making this reversionary rezoning shall thereafter be the same as applies to all other rezoning requests.

i) **Subsequent Rezoning of Land.**

When land that is rezoned with a Statement of Conditions is thereafter rezoned to a different zoning classification or to the same zoning classification but with a different or no Statement of Conditions, whether as a result of a reversion of zoning pursuant to Subsection h) above or otherwise, the Statement of Conditions imposed under the former zoning classification shall cease to be in effect. Upon the owner's written request, the City Clerk shall record with the Register of Deeds of Ottawa County a notice that the Statement of Conditions is no longer in effect.

j) **Amendment of Conditions.**

- 1) During the time period for commencement of an approved development or use specified pursuant to Subsection g) above or during any extension thereof granted by the City Council, the City shall not add to or alter the conditions in the Statement of Conditions.
- 2) The Statement of Conditions may be amended thereafter in the same manner as was prescribed for the original rezoning and Statement of Conditions.

k) **City Right to Rezone.**

Nothing in the Statement of Conditions nor in the provisions of this Section shall be deemed to prohibit the City from rezoning all or any portion of land that is subject to a Statement of Conditions to another zoning classification. Any rezoning shall be conducted in compliance with this Ordinance and the Michigan Zoning Enabling Act (MCL 125.3101 et seq.)

l) **Failure to Offer Conditions.**

The City shall not require an owner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect an owner's rights under this Ordinance.

[Ordinance No. 245, 08/11/08]

Section 12.60 Performance Guarantee

- a) As a condition of approval of a site plan, special land use, planned unit development, variance, or other zoning action, the Zoning Administrator, Planning Commission, City Council, or Zoning Board of Appeals, as appropriate, may require a bond or other financial guarantee of sufficient sum to assure the installation of those features or components of the approved activity or construction which are considered necessary to protect the health, safety and welfare of the public and of users or inhabitants of the proposed development. Such features or components, hereafter referred to as "improvements", may include but shall not be limited to roadways, curbs, landscaping, fences, walls, screens, lighting, drainage facilities, sidewalks, utilities and similar items.
- b) Performance guarantees shall be processed in the following manner:
 - 1) The applicant shall prepare an itemized cost estimate of the required improvements, which shall then be reviewed and approved by the Zoning Administrator. The amount of the performance guarantee shall be one-hundred (100) percent of the following costs:
 - a. Purchase and/or construction of improvements.
 - b. Installation of improvements.
 - c. Architectural and/or engineering design or related professional costs.
 - d. Reasonable amount for contingencies, but in no case less than five (5) percent of total costs for a. through c. above.

- 2) The required performance guarantee shall be in the form of an irrevocable bank letter of credit, surety bond, or other form of guarantee acceptable to the party requiring the guarantee.
- 3) Upon receipt of the required performance guarantee, the Zoning Administrator shall issue a certificate of zoning compliance for the subject development or activity.
- 4) The Zoning Administrator, upon the written request of the applicant, shall rebate portions of the performance guarantee upon determination that the improvements for which the rebate has been requested have been satisfactorily completed. The portion of the performance guarantee to be rebated shall be in the same amount as stated in the itemized cost estimate for the applicable improvement.
- 5) When all of the required improvements have been completed, the applicant shall send written notice to the Zoning Administrator of completion of all improvements. Thereupon, the Zoning Administrator shall inspect all of the improvements and shall recommend to the Planning Commission, City Council, or Zoning Board of Appeals, as appropriate, approval, partial approval, or rejection of the improvements with a statement of the reasons for any rejections.
- 6) The Planning Commission, City Council, or Zoning Board of Appeals, as appropriate, shall either approve, partially approve, or reject the improvements. The Zoning Administrator shall notify the applicant in writing of the action of the Planning Commission, City Council, or Zoning Board of Appeals, as appropriate, within thirty (30) days after the official action of the Commission, Council, or Zoning Board of Appeals. Where partial approval is granted, the applicant shall be released from liability pursuant to relevant portions of the performance guarantee, except for that portion sufficient to secure completion of the improvements not yet approved.
- 7) A record of authorized performance guarantees shall be maintained by the Zoning Administrator.

Section 12.70 Recording of Site Plans, Planned Unit Developments, and Other Instruments

After final City approval, the City may record with the Ottawa County Register of Deeds approved site plans and other similar instruments that include more than one (1) platted lot, planned unit developments, and other zoning actions and approvals as determined necessary and appropriate. The recording fee shall be borne by the applicant who shall remit same prior to receipt of a Permit for Zoning Compliance. This provision shall not be construed to replace any recording requirement mandated by other statutes, ordinances, or regulations. [Ordinance No. 265, 10/4/2010]

Section 12.80 Ordinance Violations

- a) Any building or structure moved, erected, razed, converted, or used and any use of land or premises which is carried on in violation of this Ordinance is declared to be a nuisance

per se. All buildings, structures, and land uses considered to be in violation of this Ordinance shall be reported to the Zoning Administrator.

- b) After an order to correct the violation has been issued by the Zoning Administrator, the property owner (owner of the property upon which the violation is located) shall have five (5) days to correct the violation. If the violation cannot be corrected within five (5) days the Zoning Administrator may, with just cause, extend the correction period for an appropriate amount of time up to a period of six (6) months. The approved extension period shall be at the discretion of the Zoning Administrator.

In the event a longer period of time is required:

- 1) The Zoning Board of Appeals, upon petition, may grant up to six (6) additional months to correct the violation if conditions warrant an extended period of time. The six (6) period shall commence at the end of the extended period as approved by the Zoning Administrator (as referenced above).
- 2) If the violation involves a special land use or planned unit development, the request for the extended period of time shall be made to, and approved by, the City Council. Any violation not corrected within the required time frame shall be reported to the City Council.

In all cases, a request for extending the period of time for correcting a violation shall be made by the applicant. The request shall be in writing to the Zoning Administrator and shall include specific detail on why the violation occurred, the requested timeframe for correcting the violation, and actions to be pursued by the land owner to ensure correction of the violation. The written request shall be delivered to the Zoning Administrator no less than twenty-one (21) days prior to the expiration of the extended timeframe as originally approved by the Zoning Administrator.

In the event the Zoning Administrator determines the violation poses an imminent threat to the health, safety, and welfare of the occupants of the premises on which the violation is located or to the general public, the Zoning Administrator may require that immediate measure be taken to correct the violation.

- c) Any person, firm, corporation, or organization who violates, disobeys, omits, or refuses to comply with any provisions of this Ordinance or lawful order of the Zoning Administrator, Planning Commission, Zoning Board of Appeals, or City Council issued in pursuance of this Ordinance shall be responsible for a civil infraction punishable by the sanctions as set forth below. Each day which a violation continues, may be deemed a separate infraction.
- d) The sanction for any violation of this Ordinance which is a municipal civil infraction shall be a civil fine as provided herein, plus any costs, damages, expenses, and other sanctions authorized under Act 12 through 26, Public Acts of Michigan of 1994.
- e) The Zoning Administrator, the Building Inspector, together with the police officers of the City of Ferrysburg, are authorized officials to issue municipal civil infraction citations and municipal civil infraction violation notices for violation of this Ordinance.

- f) A violation of this Zoning Ordinance shall be a civil infraction subject to a fine. Increased civil fines will be imposed for repeated violations that occur within a six (6) month period. The civil fine for a first offense is Fifty Dollars (\$50.00). The civil fine for the first repeat offense is Two Hundred Fifty Dollars (\$250.00) The civil fine for the second repeat offense is Five Hundred Dollars (\$500.00). The City shall also be entitled to equitable relief to abate the violations and to such other relief as may be available to the City pursuant to Chapters 83 and 87 of the Michigan Revised Judicature Act, as amended at the present time or in the future.

