

# Onekama Village Zoning Ordinance

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As Amended: May 4, 2023

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## ARTICLE 1: TITLE, PURPOSES AND LEGAL CLAUSES

### 101. Title

This Zoning Ordinance shall be known as the "Onekama Village Zoning Ordinance" and is referred to as the "Ordinance".

### 102. Purposes

Pursuant to the Michigan Zoning Enabling Act, Act 110 of 2006, MCL 125.3101 et seq. (the "Act"), this Ordinance is amended and enacted based upon the Master Plan adopted by the Village Council:

- A. to promote and protect the public health, safety and general welfare;
- B. to encourage the use of lands in accordance with their character and adaptability;
- C. to regulate the intensity of use of land and parcel areas in a manner compatible with the Master Plan adopted by the Village Council and to limit the improper use of land;
- D. to conserve natural resources and energy;
- E. to meet the needs of the State's residents for food, fiber and other natural resources, places of residence, recreation, industry, trade, service and other uses of land;
- F. to ensure that uses of the land shall be situated in appropriate locations and relationships;
- G. to avoid the overcrowding of population;
- H. to determine the area of open spaces surrounding buildings and structures necessary to provide adequate light and air;
- I. to lessen congestion on the public roads and streets;
- J. to reduce hazards to life and property;
- K. to facilitate adequate and efficient provision for transportation systems, sewage disposal, water supply, energy, education, recreation, and other public service and facility requirements; and
- L. to conserve the expenditure of funds for public improvements and services to conform with the most advantageous use of land, resources and properties.

This Ordinance is made with reasonable consideration of the character of each district, its peculiar suitability for particular uses, the conservation of property values and natural resources, and the general and appropriate character of land, building, and population development.

### 103. Application of Regulations

The regulations set forth in this Ordinance, as amended, within each zoning district shall be the minimum regulations for promoting and protecting the purposes set forth in Section 102

above. The regulations shall be uniform for each class of land or buildings, dwellings and other structures throughout each district except as expressly provided for in this Ordinance.

#### 104. Scope

This Ordinance is not intended to repeal, abrogate, annul or in any way impair or interfere with regulations of any Federal, state or county agency or with any Federal or State laws or, including but not limited to, the Right to Farm Act, MCL 286.471 et seq. If there is a provision of Federal or State statutes or regulations that the Village is required to follow and enforce that is more restrictive than the provisions of this Ordinance or contains additional provisions or limitations, it shall be incorporated into this Ordinance by reference upon its effective date and shall supplement, modify and/or supercede the terms and conditions of this Ordinance. Where this Ordinance imposes greater restrictions, limitations, or requirements than are imposed or required by other Federal, State or local laws, ordinances or regulations, the sections of this Ordinance shall control, unless the restriction, limitation or requirement is preempted by Federal or State law.

#### 105. Effective Date

The Onekama Village Permanent Zoning Ordinance was adopted initially by the Village Council of the Village of Onekama, Manistee County, Michigan at a meeting held on May 3, 1990. This Ordinance, as amended and completely restated, was adopted by the Village Council of the Village of Onekama, Manistee County, Michigan, at a meeting held on July 16, 2014, and a notice of ordinance amendment was published on July 24, 2014 in the Manistee News Advocate, a newspaper having general circulation in the Village, as required by the Act.

DATE: July 25, 2014

Rodney Hudson  
Village President

DATE: July 25, 2014

Ruth M. Hudson  
Village Clerk

Effective August 1, 2014 at 12:01 a.m.

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## ARTICLE 5: DEFINITIONS

### 501. Purpose

For the purpose of interpreting and applying this Ordinance, certain terms are defined as set forth in Section 503. The word "shall" is always mandatory and not merely permissive. When not inconsistent with the context, the present tense of words includes the future tense and words used in the singular number include the plural number. The word "person" includes, for purposes of this Ordinance only, a partnership, corporation, association, governmental entity, or other legal entity as well as an individual or group of individuals. The word "used" includes the words "intended to be used", "designed to be used", or "arranged to be used", and the word "occupied" includes the words "intended to be occupied", "designed to be occupied", or "arranged to be occupied".

### 502. Undefined Words

Any word or term not defined herein and not having a unique legal meaning shall be interpreted within its plain or ordinary meaning.

### 503. Definitions of Words and Terms

ACCESSORY BUILDING OR ACCESSORY STRUCTURE means, respectively, a supplementary building or structure which is temporary or permanent, which is on the same parcel as the principal building or principal structure, or is a part thereof, and which is devoted exclusively to an accessory use.

ACCESSORY USE means a use naturally or normally incidental and subordinate to and devoted exclusively to the principal use of the land or building and shall not include any use of a building or structure for dwelling, living, lodging or sleeping purposes for human beings.

ACT means the Michigan Zoning Enabling Act, Act 110 of 2006, MCL 125.3101 et.seq.

ADMINISTRATOR means the Village Zoning Administrator created in Article 82.

ADULT BOOK AND/OR ADULT VIDEO STORE means a commercial establishment having videos, books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or the exposure of "specified anatomical areas", as defined in this Ordinance, as a substantial or significant portion of its stock in trade.

ADULT CABERET means a commercial establishment which has a substantial or significant portion of its business devoted to the viewing by patrons of films, tapes or live entertainment showing "specified sexual activities" or the exposure of "specified anatomical areas".

ADULT LIVE ENTERTAINMENT ESTABLISHMENT means a commercial establishment, regardless of whether alcoholic beverages may or may not be served, which includes a nightclub, bar, restaurant, or similar establishment that features persons who appear nude or in a “state of nudity” or “semi-nudity” or live performances which are characterized by “specified sexual activities” or by the exposure of “specified anatomical areas”.

ADULT MINI MOTION PICTURE THEATER means a commercial establishment that utilizes an enclosure with a capacity for less than fifty (50) persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or the exposure of “specified anatomical areas” for observation by patrons therein.

ADULT MOTION PICTURE THEATER means a commercial establishment that utilizes an enclosure with a capacity of fifty (50) or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or the exposure of “specified anatomical areas” for observation by patrons therein.

ADULT SEXUAL DEVICE SHOP means a commercial establishment having, as a substantial or significant portion of its stock in trade, paraphernalia designed or intended for use in “specified sexual activities.”

ALTERATION means any change or addition to the type of use, any change in the structural members of a building, such as supporting walls, partitions, columns, beams or girders, or any change which will substantially increase the size of the building or substantially alter its appearance.

ARTICLE is the main division of this Ordinance and is cited in numbers as Article. ARTICLES are further subdivided into SECTIONS which are cited as the Article Number followed by the Section Number. For example, Article 10, General Regulations is cited as Article 10, and its first section, “Purpose”, is cited as Section 1001. Sections are further divided into SUBSECTIONS designated by Capital letters and are cited as the Section Number followed by a period and a Capital letter. For example, if there were Subsections in Section 1001, the first subsection would be designated by the Capital letter “A” and would be cited as Section 1001.A. Subsections are further divided into DIVISIONS designated by numbers; Divisions are subdivided into PARAGRAPHS designated by lower case letters; and, paragraphs are subdivided in SUBPARAGRAPHS designated by numbers inside parentheses. The Parts in outline form are:

	Article 10	
Section 1001		Cited as Section 1001 or Sec.1001
Subsection A.		Cited as Section 1001.A or Sec.1001.A
Division 1.		Cited as Section 1001.A.1 or Sec.1001.A.1
Paragraph a.		Cited as Section 1001.A.1.a or Sec.1001.A.1.a
Subparagraph (1)		Cited as Section 1001.A.1.a.(1) or Sec.1001.A.1.a.(1)

**BED & BREAKFAST ESTABLISHMENT** means a “bed and breakfast” establishment is defined as a use, which is subordinate to the use of a dwelling as a single-family dwelling. Sleeping room(s) and breakfast(s) are provided to transient guests in return for payment. The dwelling shall be the principal residence of the owner, and the owner shall live on the premises when the bed and breakfast operation is active.

[Definition Added by Ordinance Number 01 of 2023, effective May 04, 2023]

**BOARD** means the Zoning Board of Appeals of the Village of Onekama created in Section 9601.

**BOARDING ROOM/ROOMING HOUSE** means an owner-occupied dwelling used for the purpose of providing lodging or lodging and meals for pay or compensation of any kind, to persons who are not members of the immediate family, but whose relationship is not of a transient or seasonal nature, and who concurrently remain in actual occupancy of such dwelling as their principal residence.

[Definition Added by Ordinance Number 01 of 2023, effective May 04, 2023]

**BUILDING** means any structure, either temporary or permanent, having a roof or its equivalent supported by walls or by columns or other structural materials at the corners or their structural equivalents and used or built for the purposes of providing shelter or enclosure of persons, animals, or property of any kind. A building includes any eaves to the drip line, any awnings, and any attached porches, decks or steps regardless of whether roofed or not. If it is used for purposes of a building as set forth in this definition, a trailer which is situated on private property, regardless of whether it is mounted on the ground or on wheels or a tent which is likewise situated on private property is either a building or an accessory building depending upon its use.

**BUILDING HEIGHT** means the vertical distance measured from the average existing grade at the building site to the highest part of the roof.

**CARPORT** is an accessory building used to provide shelter for an automobile or any other personal property and is subject to the requirements set forth in Section 1011. Portable carports, which consist of lightweight canvas and aluminum or other lightweight materials, are not permitted in the Village unless they are in full compliance with Section 1011.

**COMMERCIAL** means engaged in commerce, the buying or selling of commodities or the provision of services for a fee.

**CORNER LOT** means a lot on which at least two (2) adjacent sides abut for their full length upon a street or right-of-way, provided that such sides intersect at an angle of not more than 135 degrees.

**CORNER LOT, SETBACKS** — front yard setbacks shall be used for yards adjacent to streets or right-of-ways, and side yard setbacks for the respective zoning districts shall be used for the

remaining lot lines, except that, for a corner lot which is contiguous to Portage Lake, rear yard setbacks shall be used for yards adjacent to streets or right-of-ways.

**DOCK** means a structure, part of which is affixed to the ground, that extends over or floats upon a body of water and is used as a place for landing boats or other waterborne vehicles or for fishing, swimming or other recreational activities. A **TEMPORARY SEASONAL DOCK** means a dock so designed and or constructed in order that it may be removed on a seasonal basis.

**DIGITAL SIGN** means a sign that has or appears to contain movement or that appears to change caused by a method other than physically removing and replacing the sign or its components, whether the real or apparent movement or change is in the display, the sign structure itself, or any other part of the sign. A digital sign often incorporates a technology allowing the sign face to change the image without the necessity of physically or mechanically replacing the sign face or its components. A digital sign includes any display that incorporates rotating panels, LED lights manipulated through digital input, electronic message centers, or other similar methods or technologies that permit a sign face to present different images or displays.

[Definition Added by Ordinance Number 01 of 2016, effective March 18, 2016]

**DWELLING** means any structure, or any permanently separate unit contained therein, which is occupied as a residence, living, or sleeping place by one or more human beings, which is designed to provide living, cooking and eating space and bathing and sanitary facilities for one or more families, and which conforms in all respects to the standards and requirements set forth in this Ordinance. **DWELLING** does not depend upon the form of ownership of such structure and/or unit or of the parcel on which they are located and includes a single family dwelling, a duplex and a multiple family dwelling, as defined below:

- A. Single Family Dwelling means a structure consisting of one dwelling designed exclusively for residential use and occupied only by one human being or by one family.
- B. Duplex means a structure designed exclusively for residential use and occupancy by two families, each living independently of the other and each living in one of the two permanently separate units contained in that structure.
- C. Multiple Family Dwelling means a structure designed exclusively for residential use and occupancy by three or more families, each living independently of the other and each living in one of the three or more permanently separate units contained in that structure.

**EASEMENT** means a private irrevocable agreement of record between landowners and public utilities, or persons for a specific purpose such as, but not limited to, utilities, driveways, pipelines, or pedestrian ways.

**EATING AND DRINKING ESTABLISHMENT:** A retail establishment selling food and drink for consumption on the premises, including restaurants, taverns, coffee houses, bakeries, lunch counters, refreshment stands and similar facilities selling prepared foods and drinks for immediate on-site consumption or for take-out.

[Definition Added by Ordinance Number 01 of 2023, effective May 04, 2023]

**ENVIRONMENTAL ASSESSMENT** means a summary review of the impacts which a proposed project will have on the environment.

**ENVIRONMENTAL IMPACT STATEMENT** means a document, prepared by an environmental expert, which is a detailed review of the impacts on the environment by a proposed project.

**FAMILY** means an individual or collective number of individuals living together in a Dwelling or in one unit in a Duplex or Multiple Family Dwelling under one head, whose relationship is of a permanent and distinct domestic character, and cooking as a single housekeeping unit. Not included within this definition of family is any society, club, fraternity, sorority, association, lodge, federation, group, coterie, occupants of a counseling house, lodging house or hotel, organization which is not a recognized religious order, or any group of individuals whose association is temporary or resort-seasonal in character or nature.

**FENCE** means a structure, planted hedge or line of trees which is intended to restrict, or has the effect of restricting, passage onto or off of the parcel on which the fence is located, or which restricts the ability to see onto the parcel .

**FLOOR AREA** means the useable or habitable floor area of a building or structure, exclusive of any garage, breezeway, porches, patios, decks, basement, crawlspace, attics or an attached accessory building.

**HOME OCCUPATION** means a use which is any activity carried out for financial gain by a person who resides in a dwelling and which is conducted as an accessory use in the dwelling. This definition includes but is not limited to use of a single family dwelling by an occupant of that dwelling for a home occupation to give instruction in a craft or fine art within that dwelling.

**HOTEL** means a building or part of a building with ten (10) units or more with a common entrance or entrances containing dwelling units or rooming units or both, in which one or more of the following special services are required: maid service, furnishing of units, linen service, telephone, desk, or bellboy service. A hotel may include accessory uses such as a restaurant, cocktail lounge, public banquet halls, ballrooms, or meeting rooms.

[Definition Added by Ordinance Number 01 of 2023, effective May 04, 2023]

**HOTEL BOUTIQUE** means a building or part of a building with a common entrance or entrances containing a maximum of nine (9) dwelling units or rooming units or both, in which one or more of the following special services are required: housekeeping service, linen service, telephone or front desk. A Boutique Hotel may include a restaurant, cocktail lounge, public banquet halls, ballrooms, meeting rooms and gathering places.

[Definition Added by Ordinance Number 01 of 2023, effective May 04, 2023]

**IMPERVIOUS SURFACE** means a hard surface area that prevents or substantially impedes the natural infiltration of water into the underlying soil, including, without limitation, buildings,

accessory buildings, roofed structures, roadways, driveways, parking places, sidewalks, patios and courts for sports activities.

JUNK means:

- A. old scrap ferrous or nonferrous material, rubber, cloth, paper, rubbish, refuse, litter;
- B. materials from demolition, waste building materials; and,
- C. junked, abandoned, scrapped, dismantled or wrecked (including parts of or items held for salvaging parts) automobiles, farm equipment, boats, trailers, mobile homes, appliances and all other machines.

It does not include classic or antique items kept or collected for their objective antique or collectible value.

LOT OF RECORD means a lot or parcel which is part of a subdivision and is shown on a plat or map thereof that has been recorded in the office of the Register of Deeds of Manistee County prior to the May 3, 1990 adoption date of the Onekama Village Permanent Zoning Ordinance or which is described by survey or metes and bounds in a deed or land contract recorded in that Office prior to said date.

MARINA means a commercial establishment which extends into, over or abuts a water body and offers services for a fee to the public or to members of the marina for docking, loading, or other servicing of recreational watercraft. A single boat dock maintained for private non---commercial use on a parcel contiguous to Portage Lake shall not be included within the definition of "marina".

MASTER PLAN means the Master Plan adopted by the Village Council.

MOTEL: A series of attached, semi-detached, or detached rental units with separate outside entrances, which may or may not contain a separate bedroom, bathroom, closet space, and may include kitchenettes, with not more than two dwelling unit for occupancy by onsite management and/or staff only.

[Definition Added by Ordinance Number 01 of 2023, effective May 04, 2023]

NATIVE VEGETATION means vegetation which grew in Michigan before the arrival of the early settlers and which are adapted to the specific environments in this area. Native vegetation includes trees, flowers, prairie grasses, ferns, bushes, and other plants but does not include typically manicured lawn grasses and turf grass. Information concerning native vegetation, including a listing of native plants, grasses and trees, and concerning invasive species is available from the Zoning Administrator.

NONCONFORMING STRUCTURE means a structure or portion thereof, which existed before this Ordinance was adopted or amended, that does not conform to the general regulations of this Ordinance or the regulations and standards of the Zoning District in which it is situated.

**NONCONFORMING USE** means a use, which lawfully existed before this Ordinance was adopted or amended, that does not conform to the use provisions of the Zoning District in which it is located.

**NONCONFORMING PARCEL** means a parcel, which existed before this Ordinance was adopted or amended, that does not meet the minimum requirements of the Zoning District in which it is situated.

**NUDITY** means, where used in this Ordinance only, the exposure in a public place of human genitals, pubic area, anus, or nipple or any part of the areola of the female breast.

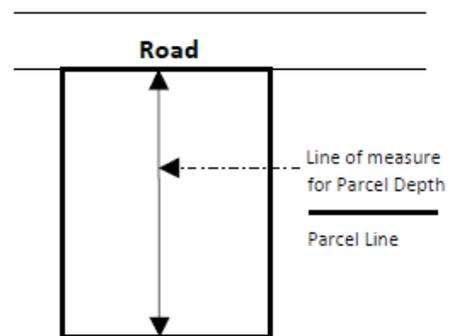
**ORDINARY HIGH-WATER MARK(S)** means the line which would mark the edge of the water of Portage Lake if the water level of Portage Lake was 580.5 feet above sea level.

**OPEN AIR MARKET** means any selling, at a temporary location not housed in an enclosed year-round building, of retail goods, products or services including farmers markets, fruit and fruit products markets, yard sales, moving sales, and garage sales but does not include a road side stand or farmers market which is covered by a Generally Accepted Management Practice for Farm Markets.

**OWNERSHIP** means a collection of rights to use and enjoy property, including the right to transmit it to others.

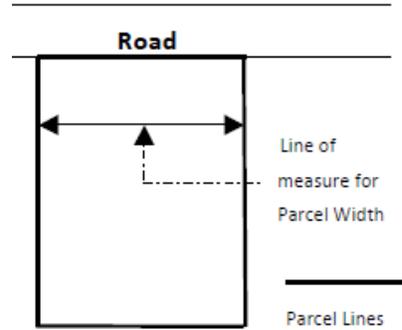
**PARCEL** means any tract or contiguous tracts of land in the same ownership, whether one or more platted lots or parts of lots, as identified by a property tax parcel number in the Onekama Township assessment roll.

- A. **DEPTH** of parcel shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the front property line and rearmost points of the rear property line.



B. WIDTH

1. The distance between straight lines connecting front and rear property lines at each side of the parcel.
2. In determining parcel frontage on odd shaped parcels if the parcel abuts on the outside curve boundary of a curving street and as a result the side property lines diverge toward the rear the measurement of the width shall be equidistant and parallel to the front building lines of the principal building.
3. If the parcel abuts on an inside curve boundary of a curved street wherein the property lines converge toward the rear, the measure shall be taken at a point seventy (70) feet from the street property line of said parcel.
4. The average width measured at right angles to its depth.



PARKING SPACE means one unit of parking area provided for the parking of one automobile.

PLANNING COMMISSION means the Village Planning Commission.

PARKS means public or private playgrounds, vest pocket parks, nature areas, natural areas, ball fields, open space preserves, arboretums, gardens, beaches, and so on but not including facilities designed for overnight camping use.

PERSON means an individual or a group of individuals and, for purposes of this Ordinance only, includes a partnership, corporation, association, governmental entity, or other legal entity.

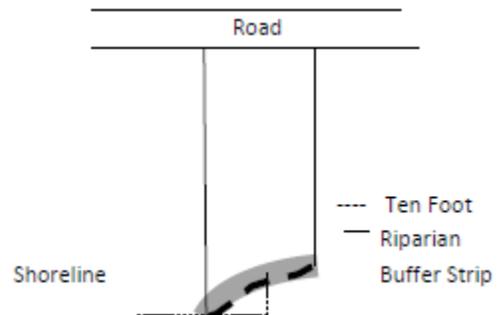
PRESIDENT means the chief elected official of the Village Council.

PRINCIPAL BUILDING OR PRINCIPAL STRUCTURE means, respectively, a building or structure which is devoted to the principal use of the parcel on which it is situated.

PROPERTY LINES means the outside perimeter of a legally described parcel of land.

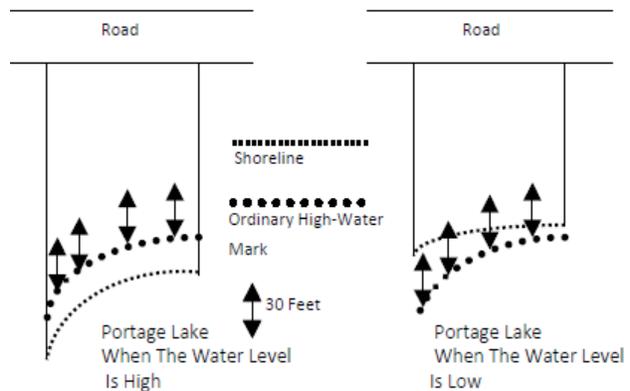
RIGHT-OF-WAY means a public or private way for road purposes.

RIPARIAN BUFFER STRIP means a strip of land, ten (10) feet in width measured landward from the shoreline of Portage Lake or a strip of land five (5) feet in width measured outward from the banks of streams or creeks on any parcel or portion of a parcel within the Portage Lake Overlay Zone, which is natural, undeveloped land where the existing native vegetation is left intact or which is land planted with native vegetation. Its purpose is to protect Portage Lake and creeks and streams by reducing the infiltration of pollutants such as sediment, nutrients, and organic matter, by preventing erosion, and by providing shade.



**RIPARIAN SETBACK:**

- A. The Riparian Setback from the shoreline of Portage Lake is measured on a horizontal plane thirty (30) feet landward from the Ordinary High Water mark of 580.5 feet above sea level.
- B. The Riparian Setback from a stream or creek is measured ten (10) feet outward from the banks of a stream or creek on any parcel in the Village.

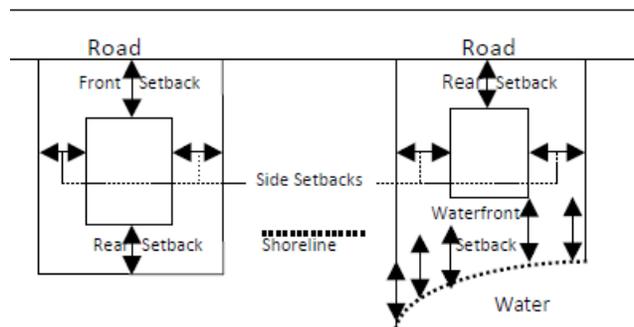


SEASONAL means a use or a structure which is occupied or utilized less than a six month period usually during either the summer or the winter and including parts of the fall and spring.

SECTION, see definition of ARTICLE.

SEMI-NUDITY means, where used in this Ordinance only, a state of dress in public in which the genitals, pubic area, anus, or nipple and areola of the female breast are less than completely and opaquely covered.

SETBACK means a line which parallels a property line or boundary of a natural feature which is a specified distance toward the center of a parcel from the property line or natural feature. Side, front, rear and waterfront setbacks correspond to the respective yards as defined in this Article.



SEXUALLY ORIENTED BUSINESS means a commercial adult bookstore, commercial adult video store, commercial adult cabaret, commercial adult motion picture theater, commercial adult mini motion picture theater, commercial adult sexual device shop, or a commercial adult live entertainment establishment that regularly features live performances characterized by the exposure of a specified anatomical area or by a specified sexual activity or in which persons appear in a state of nudity or semi-nudity in the performance of the duties of their employment. However, SEXUALLY ORIENTED BUSINESS does not include a business solely because it shows, sells or rents materials that may depict sex.

SIDEWALK means a paved walk at or near the side of a road or street.

SIGN means any structure, figure, device, display or other object used for the display of any message.

SITE PLAN includes the documents and drawings required by this Ordinance to ensure that a proposed land use or activity is in compliance with this Ordinance and State and Federal statutes.

SPECIFIED ANATOMICAL AREA means human genitals, pubic area, anus, or nipple or any part of the areola of the female breasts.

SPECIFIED SEXUAL ACTIVITY means the fondling or any erotic touching of uncovered or covered human genitals, pubic area, anus, or female breast.

STATE means the State of Michigan.

STRUCTURE means anything constructed, erected or placed with a fixed location on the ground or anything affixed to something having a fixed location on the ground, provided, however, that hunting blinds, sidewalks, patios, tennis courts, driveways, or gardens are not structures.

SUBSTANTIAL OR SIGNIFICANT PORTION means that thirty-five (35%) or more of the stock, materials or services of a business are involved in or related to a specified sexual activity and/or to a specified anatomical area or that thirty-five (35%) or more of the usable floor area of a building owned or operated by a business is used for, or related to, a specified sexual activity and/or a specified anatomical area.

TEMPORARY DWELLING means a structure, either fixed or mobile, constructed or used for human occupancy on a temporary or seasonal basis.

TRAILER means a vehicle which can be drawn on a highway and is used for recreational or camping purposes. For purposes of this Ordinance, TRAILER includes the terms motor home, pole-trailer, trailer coach, and trailer as defined in the Michigan Motor Vehicle Code.

UNWHOLSOME SUBSTANCE means any trash, garbage, cans, automobile body, inoperable vehicle, trailer body, hazardous compound, harmful substance, debris, waste, junk, rubbish, refuse, offal, abandoned, discarded or unused objects, machinery or equipment such as furniture, stoves, refrigerators, freezers, utensils, containers or other deleterious substances or objects.

USE means the purpose for which land or a building thereon is designed, arranged or intended to be occupied or used or for which it is maintained.

VARIANCE, NON-USE means a relaxation of the size, setback or other regulations and standards of this Ordinance applied to a structure or parcel where such relaxation will not be contrary to the public interest, where a literal enforcement of the Ordinance would result in unnecessary or practical difficulties, and where special conditions and circumstances exist which are peculiar to the parcel or structure involved, which are not applicable generally to other parcels or structures in the same Zoning District, and which are not the result of the action of the person seeking the variance.

VILLAGE means the Village of Onekama, a general law Michigan village.

VILLAGE COUNCIL means the legislative body of the Village which consists of its President and Trustees.

WATER BODY means surface water, lakes, ponds, wetlands, rivers, streams, creeks, and springs but does not include man-made farm ponds, storm water retention ponds, sediment ponds or the impromptu or uncontrolled collection of storm water.

WETLAND means land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh, and which is contiguous to Lake Michigan, an inland lake or pond, or a river or stream.

WIRELESS COMMUNICATIONS EQUIPMENT means the set of equipment and network components used in the provision of wireless communications services, including, but not limited to, antennas, transmitters, receivers, base stations, equipment shelters, cabinets, emergency generators, power supply cables, and coaxial and fiber optic cables, but excluding wireless communications support structures.

WIRELESS COMMUNICATION EQUIPMENT COLLOCATION means the placement or installation of wireless communication equipment on an existing wireless communications support structure or in an existing equipment compound.

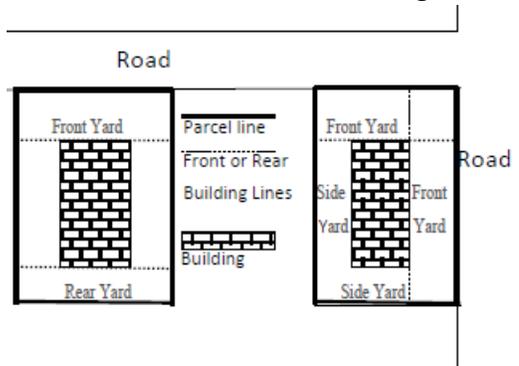
WIRELESS COMMUNICATION EQUIPMENT COMPOUND means an area surrounding or adjacent to the base of a wireless communication support structure and within which wireless communications equipment is located.

WIRELESS COMMUNICATIONS SUPPORT STRUCTURE means a structure that is designed to support, or is capable of supporting, wireless communications equipment, including a monopole, self-supporting lattice tower or guyed tower.

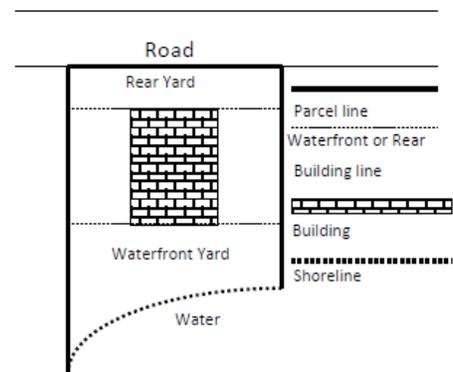
YARD means the space open to the sky between the principal building and the lot lines of the parcel on which it is located, unoccupied and unobstructed by an encroachment or structure except as otherwise permitted by this Ordinance.

A. BUILDING LINE means a line drawn parallel to the nearest lot line and through the building's point or side nearest to such lot line.

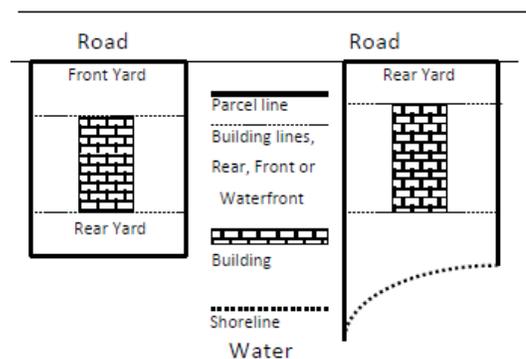
B. On a parcel not adjacent to the shoreline of Portage Lake, FRONT YARD means the yard or yards extending across the width or length of the parcel and between the front or side building lines and respectively, the front parcel line or a side parcel line which is adjacent to a road or road right-of-way



C. WATERFRONT YARD is the front yard of a parcel adjacent to Portage Lake and means the yard extending across the width of the parcel between the lake front property line which runs along the shoreline of Portage Lake and the front building line drawn through the point of the building nearest to the shore line and ending at right angles at the side lot lines.

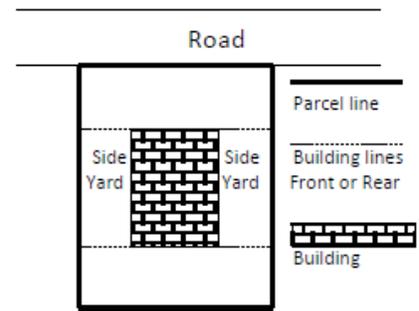


D. REAR YARD, for a parcel not adjacent to Portage Lake, means a yard extending across the width of the parcel between the rear building line and the property line on the opposite side of the parcel from the property line adjacent to the road right-of-way. For a parcel adjacent to Portage Lake, REAR YARD means a yard extending across the width of the parcel between the rear building line drawn through the point of the building closest to the road right-of-way and ending at right



angles at the side property lines and the property line opposite from the property line which runs along the Portage Lake shoreline

- E. SIDE YARD means the remaining yards between the front and rear building lines and the side parcel line(s).



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## ARTICLE 10: GENERAL REGULATIONS

### 1001. Purpose

This Article provides regulations that apply in all zoning districts to all structures, parcels, permitted uses and special uses.

### 1002. Scope

Zoning applies to all parcels, structures and uses. No parcel shall be built upon and no existing structure or part thereof shall be structurally altered except in conformity with this Ordinance. No new structure or part thereof shall hereafter be located, erected, occupied, structurally altered, used or changed in use except in conformity with this Ordinance.

### 1003. Waste Accumulation and Outside Storage

- A. No unwholesome substance, as defined in this section, shall be deposited, buried, stored, kept, dumped, or accumulated by any person in any water body or on or under any land, private or public, in the Village. An unwholesome substance includes any trash, garbage, cans, automobile body, inoperable vehicle, trailer body, hazardous compound, harmful substance, debris, waste, junk, rubbish, refuse, offal, abandoned, discarded or unused objects, machinery or equipment such as furniture, stoves, refrigerators, freezers, utensils, containers or other deleterious substance. These articles on the premises of private residences or properties, commercial institutions or roadways create blight and greatly increase the danger of fire and the spread of infectious diseases. This subsection shall not be interpreted to prohibit the temporary placement of household or commercial refuse and/or recyclables in standard containers awaiting pickup or transport to a disposal facility.
- B. No sewage, waste water or water containing foreign substances shall be deposited onto any parcel or be allowed to drain into any water bodies unless prior approval to do so has been obtained from the proper authority pursuant to State or Federal law. The provisions of this Section are not to be deemed to prohibit storing or spreading of manure, non-phosphate fertilizers, or other soil conditioners as part of a permitted farm, forestry, home garden or lawn operation.

### 1004. Wetlands

A land use permit shall not be issued for any use or structure which is located in a wetland or on a parcel that drains into a wetland or for any filling-in of any part of a wetland except if the Administrator finds that:

- A. A wetland permit has been issued by the applicable State agency and/or Federal agency, if a permit is required;

- B. A soil erosion permit has been issued by the Manistee County Soil, Erosion & Sedimentation Control; and
- C. All regulations, standards, and requirements of this Ordinance and State or Federal laws have been met.

### 1005. Water Supply and Sewage Facilities

Every structure hereafter used in whole or in part for dwelling, recreational, business, commercial or industrial purposes shall be provided with:

- A. A safe and sanitary water supply; and,
- B. A system of collection and disposal of human excrement and domestic, commercial and industrial waste that is connected:
  - 1. if the structure in which sanitary sewage originates is located within 200 feet from the Village sanitary sewer system, to the Village sanitary sewer system; and,
  - 2. if not so located, to a private system which complies with the District #10 Health Department Sanitary Code.

### 1006. Height

No structure or part thereof shall be erected or altered to a height exceeding thirty-five (35) feet or two stories, whichever is shorter. This section does not apply to radio or television antenna systems or flag poles which are less than fifty (50) feet in height above ground level and does not apply to a wireless communication support structure which complies with Section 1020.B.3.

### 1007. Bulk/Density Regulations

- A. The maintenance of setback, height, floor area, floor area at ground level, coverage, impervious surface percentage limitation, open space, greenbelt, transition strip, Riparian Buffer Strip, parcel area, and parcel area per dwelling unit required for one (1) use, parcel, or structure shall be a continuing obligation of the owner of such structure or of the parcel on which such use or structure shall be located or is in existence. No setback, height, floor area, coverage, impervious surface percentage limitation, open space, greenbelt, transition strip, Riparian Buffer Strip, parcel area and parcel area per dwelling unit allocated to or required about or in connection with one parcel, use or structure may be allocated to any other parcel, use, or structure.
- B. No one (1) lot, once designated and improved with a structure, shall be reduced in area or divided into two (2) or more lots, and no portion of one (1) lot, once so designated and improved, shall be sold unless each lot resulting from each such reduction, division or sale, and designated and improved with a structure, shall conform with all of the bulk and yard regulations of the Zoning District in which it is located and shall comply with any other applicable statutes or ordinances, including the State of Michigan Subdivision Control Act.

- C. Zoning District Yard and Setback Requirements — The Zoning District setback and yard requirements established by this Ordinance shall apply uniformly in each Zoning District to every parcel or structure, except that flag poles, arbors, and trellises may be located within the setback areas in any yard, subject to compliance with Section 1008.

### 1008. Protection of Traffic Visibility at Corners

No parking space, parked vehicle, fence, shrub, tree, sign, or any similar item shall be located, or erected or maintained on public or private property within fifteen feet from the corner of two intersecting streets or roads or of a road and street, except for a street or road name sign erected by the Village or for a directional sign permitted by the Administrator under Section 1015.A.4.

### 1009. Vehicular Parking Space, Access

- A. For each principal building or commercial establishment hereafter erected and located on a public road and for each existing principal building or commercial establishment which is on a public road and which has been increased cumulatively in size or hours of operation by more than fifty percent (50%) after the effective date of the amendment of this Section, there shall be provided and maintained suitable spaces off the public right- of-way which are adequate for the parking or loading and unloading of motor vehicles as set forth below:
  1. Single Family Dwelling and a Unit in Duplexes and Converted Motels/Hotels — two parking spaces;
  2. Multiple Family Dwelling structures — two and one-half parking spaces for each dwelling unit; and,
  3. Hotels— Hotels with ten (10) rooms or more must provide 1 parking space per rentable room.
  4. All commercial establishments — 3 parking spaces for each 900 square feet of useable floor area.

[Subsection Amended by Ordinance Number 01 of 2023, effective May 04, 2023]

- B. A parking space shall be, at a minimum, 10 feet wide and 20 feet long.
- C. Approval for location of all exits and entrances for access to parking areas shall be obtained from the Planning Commission and/or appropriate State or County agencies. Such approval shall also include the design and construction thereof in the interests of safety, adequate drainage and other public requirements.
- D. Hotels Boutique with nine (9) rentable rooms are exempt from parking requirements.

[Subsection Added by Ordinance Number 01 of 2023, effective May 04, 2023]

- E. Within the Commercial Residential Districts, the Planning Commission may approve shared parking arrangements among various uses when it can be demonstrated that parking in sufficient quantities for all such uses can always be met.

[Subsection Added by Ordinance Number 01 of 2023, effective May 04, 2023]

- F. Within the Commercial Residential District and subject to planning commission review and approval, an off-street parking lot is not required to be located on the same property it is intended to serve only if such off-street parking meets all of the following criteria:
1. The off-street parking lot shall be located within 500 feet of the public entrance of the main building it serves.
  2. A minimum four-foot wide concrete sidewalk from the parking lot to the building entrance is available for pedestrian use. Existing four-foot wide concrete sidewalks are acceptable. Installation of any new concrete sidewalk to meet this requirement shall be a minimum of five feet wide.
  3. A land use permit has been obtained for the off-premise parking lot in accordance with Article 84, Permits.
  4. A parking agreement must be executed between property owners of the affected parcels and recorded with the county register of deeds.

[Subsection Added by Ordinance Number 01 of 2023, effective May 04, 2023]

## 1010. Dwellings

Any structure or any permanently separate unit contained therein which is used as a dwelling shall comply with the Dwelling standards of this Ordinance, and/or applicable State and Federal standards. The minimum standards for any such structure or such unit hereinafter erected and/or used as a dwelling are listed below, and no construction required to comply with this Section shall commence until after all applicable construction permits have been obtained.

- A. Minimum Dwelling width, floor area, and ground floor area requirements are found at Section 4004.E and Section 5004.E.
- B. Every Dwelling shall be on a foundation in the ground so that the bottom of the foundation is below the frost line, or thirty (30) inches, whichever is greater, or on any foundation which complies with the Michigan Building Code.
- C. Every Dwelling shall comply with all State and Federal construction codes, as applicable.
- D. Every Dwelling shall comply with all applicable building and fire codes and shall meet or exceed all applicable roof snow load and strength requirements.
- E. Any rooms or other areas added to an existing Dwelling shall be constructed with similar quality workmanship as that of the original structure.
- F. Any structure attached permanently to a Dwelling shall comply with foundation requirements of this Section and Michigan Building Code.

## 1011. Location and Regulation of Accessory Buildings and Structures

- A. All accessory buildings and structures, whether free standing or attached to a Dwelling or principal building, shall meet all setback and other regulations of this Ordinance and shall be located in a side yard or rear yard. No accessory building or structure, whether attached or freestanding, is permitted to be located in front yards or waterfront yards. An accessory building attached to the Dwelling or principal building shall be made structurally a part thereof and shall comply in all

respects with the requirements applicable to the dwelling or principal building. A free standing accessory building shall not be closer than ten (10) feet to the Dwelling or principal building.

- B. No storage building, accessory building or accessory structure shall be allowed on any parcel in the Village unless the Dwelling or principal structure is located on the same parcel.
- C. An accessory building to a Dwelling shall be less than nine (900) hundred square feet in area and side walls shall not be more than ten (10) feet in height measured from the floor to the top plate, provided, however, if the accessory building is located on a parcel which is more than two (2) acres in size, the side walls shall not be more than twelve (12) feet in height so measured. Eaves shall be boxed and exterior surface shall be painted, coated or sided so as to maintain the residential appearance of the neighborhood.
- D. An accessory building to a principal building within the Commercial Residential District, whether attached or free standing, shall not exceed the height of the principal building or thirty-five (35) feet, whichever is less, and shall not be larger than the principal building. Eaves shall be boxed and exterior surfaces shall be painted, coated or sided.
- E. Every accessory building and accessory structure shall be placed on a foundation in the ground so that the bottom of the foundation is below the frost line, or thirty (30) inches, whichever is greater, or on any foundation which complies with the Building Code.
- F. No more than one (1) attached accessory building or accessory structure and one (1) free standing accessory building or accessory structure shall be located on a single parcel.
- G. A temporary accessory building, including any temporary enclosure defined as any moveable tent-like shelter intended to provide or actually providing protection from the elements for persons or for stored materials, vehicles or other items, is prohibited. The prohibition of this Subsection does not apply to such an enclosure used in Open Air Markets under Section 1012, or to a single tent or trailer permitted under Section 1014.B.

## 1012. Open Air Markets

An open air market shall not be permitted in any zoning district unless it meets one of the following standards:

- A. It is located in the Residential District on a parcel where the person, who is responsible for the market's operation, resides in a Dwelling on that parcel.
- B. It is located in the Commercial Residential District, and:
  - 1. it is on a parcel owned by the person who is responsible for the market's operation;
  - 2. that responsible person has a Michigan sales tax license; and,
  - 3. if applicable, that person complies with the Michigan Department of Agriculture regulations governing the sale of food.

- C. It is permitted under this Ordinance as a permitted land use or special use for that specific parcel of land.
- D. It is covered by a Generally Accepted Agricultural and Management Practices for Farm Markets.

### 1013. Home Occupations

Home occupations shall not be allowed in any zoning district except as hereinafter provided:

- A. The home occupation takes place in a Dwelling and is conducted by the person who resides in that Dwelling.
- B. The home occupation shall be accessory to the residential use of the property.
- C. The activities of the home occupation shall be operated in such a manner that other residents of the area, under normal circumstances which include permitted signage, would be unaware of the existence of the home occupation.
- D. The home occupation shall be conducted entirely within the Dwelling.
- E. The activities of the home occupation shall be carried on in compliance with all laws and, if applicable, in compliance with the requirements of the Michigan Department of Natural Resources concerning disposal of hazardous waste.

### 1014. Temporary Dwellings

No person shall use, or permit the use of, any temporary structure, any trailer or any tent for dwelling purposes or as seasonal living quarters on any site, field, parcel, lot, or tract of land, except:

- A. as temporary quarters during the construction and installation of a Dwelling conforming to Section 1010 and only if the following conditions are met:
  - 1. There shall be no more than one temporary dwelling or one trailer which shall be located in compliance with all setback requirements;
  - 2. The use of that temporary dwelling or trailer shall not be contrary to the health, safety, or welfare of the public; and,
  - 3. The use of that temporary dwelling or trailer shall be limited to a six (6) month period beginning with the issuance by the Administrator of a land use permit, except that the Administrator, upon a finding of good cause shown, may extend the permit for an additional period of up to six more months; or
- B. as allowed by a permit issued by the Administrator at the request of a parcel owner, or by a person having written authorization from the parcel owner, which permit shall:
  - 1. specify that only one (1) single trailer or one (1) single tent may be used for dwelling purposes on that parcel on any calendar day in the permit's issuance year;
  - 2. shall specify that the permit is valid only for a cumulative total of twenty-one (21) consecutive and nonconsecutive days of such use and is not renewable; and,

3. shall specify that such trailer or tent must comply with all setback, impervious surface, and Riparian Buffer Strip requirements.

## 1015. Signage

- A. Signs are permitted and may be located in setback areas provided they comply with the below listed conditions.
  1. Signs must comply with the laws and regulations of the State of Michigan.
  2. Signs on parcels in the Residential District shall not exceed nine (9) square feet in area and the top edge of the sign shall not be more than three (3) feet above ground level.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

3. Signs on non-residential parcels in the Commercial Residential District:
  - a. shall be subject to advance review and approval by the Zoning Administrator concerning only size, number, location, maintenance requirements, and, where applicable, compliance with Section 1008 and Section 1015.A.4 below;
  - b. shall be limited to one sign on or attached to each building wall, except that each business located in a building may have one sign on or attached to each building wall;

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

- c. no single sign shall exceed thirty-six (36) square feet in area; and,
  - d. the total square footage of all signs located on or attached to a building shall not exceed a total of sixty-four (64) square feet in area.
4. Signs are prohibited at road intersections either on public or private property, except that a directional sign, which shall not exceed four (4) square feet in area and the top edge of which shall not be more than three (3) feet above ground level, is permissible upon prior approval obtained from the Zoning Administrator as to size, number, location, and duration.
5. Temporary signs shall be located only on the parcel or structure concerned with a temporary event, except for a directional sign as permitted by Section 1015.A.4, and shall be posted no more than seven (7) days before the event and be removed within seven (7) days following the completion of the event.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

6. Hanging signs or pylon signs (signs between two poles) are permitted only in the Commercial Residential District and shall be no lower than nine (9) feet above the ground at the bottom edge.
7. Digital signs are permitted only in the Commercial Residential District and shall comply with the following requirements:
  - a. A digital sign may not allow the display or message to change more frequently than once every sixty (60) seconds, with a transition period of one second or less. Digital signs may not

contain any visible moving parts, alternating or moving messages or have the appearance of having moving parts or messages. Under no circumstances may any type of digital sign contain a video, a message or a display that appears to flash, undulate, pulse, move, or portray explosions, fireworks, flashes of light, or blinking lights or otherwise appears to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist or make other comparable movements.

- b. A digital sign must have installed a monitor, which shall continuously monitor and automatically adjust the brightness level of the display based on conditions to comply with the following maximum brightness requirements:
  - (1). Brightness from dawn to dusk shall be no greater than 2,000 nits or an equivalent measurement of luminance.
  - (2). Brightness from dusk until dawn shall be no greater than 125 nits or an equivalent measurement of luminance.
  - (3). Brightness of digital signs shall be measured from the sign's face using a standard meter when the digital sign is turned on to full white copy.
- c. Certification must be provided to the Village demonstrating that the digital sign has been preset to automatically adjust the brightness to comply with the brightness requirements set forth in the preceding paragraph. Re-inspection and recalibration may be periodically required by the Village in its reasonable discretion and at the expense of the applicant, his or her assignees or successors, or the person who owns or exercises control over the sign, to ensure that the brightness requirements specified above are met.

[Section 1015.A.7 Added by Ordinance Number 01 of 2016, effective March 18, 2016]

- B. The following signs are prohibited in the Village:
  - 1. Signs which utilize flashing or blinking lights or flashing reflectors.
  - 2. Signs which have moving parts to attract attention, including but not limited to figures or shapes which inflate or deflate to cause motion.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

## 1016. Sexually Oriented Business

### A. Basis for Regulation

It is recognized that sexually oriented businesses have a deleterious effect upon adjacent areas causing blight, an increase in crime, a decrease in property values, a chilling effect upon other businesses and upon residents, and a downgrading of the quality of life in adjacent areas, especially when such uses are concentrated in the same general area. Therefore, it is considered necessary and in the best interests of the orderly and better development of this Village to prohibit the overcrowding of such uses into a particular location and, instead, to

require the dispersal of such uses throughout the Commercial Residential District of the Village.

B. Conditions

In order to obtain and retain a special use permit for operation of a Sexually Oriented Business as defined by this Ordinance, the following conditions must be met.

1. A special use permit must be acquired through the special use procedures of Article 86.
2. In order to prevent undesirable concentration, sexually oriented businesses shall not be located within 500 feet of two (2) other sexually oriented businesses or within 100 feet of any residentially zoned district, school, day care center, church or other religious institution, or public park or other public facility, as measured along a line forming the shortest distance between any portion of the respective property lines.
3. A sexually oriented business shall only operate between the hours of 8 a.m. and 10 p.m.
4. There shall be a manager on the premises at all times during operating hours.
5. No one under the age of 18 shall be allowed onto the premises.
6. The owner or operator of a sexually oriented business shall not erect, construct, or maintain on the premises of that sexually oriented business a sign that advertises or identifies the sexually oriented business and that is visible outside of the business unless the sign displays only words or numbers, or both, which are unrelated to a specified sexual activity or to a specified anatomical area. Nothing in this subsection is intended to prohibit a sign which displays the trademark of that business or of a credit card company provided that the trademark has been registered under Federal Law.
7. Once a special use permit has been issued, the regulated use shall not be expanded in any manner without first applying for and receiving approval of the Planning Commission as provided in this Ordinance.
8. The designated parking area for the sexually oriented business shall be lighted from dusk till dawn.
9. A secure and well-lighted entrance, separate from that provided for patrons, shall be provided for all employees.

C. Exceptions to Conditions

The Planning Commission may waive the foregoing spacing requirements of Section 1016.B.2 above if it finds that all of the following conditions exist.

1. The proposed use will not be contrary to the public interest or injurious to nearby properties in the proposed location and the spirit and intent of the purpose of the spacing regulations will be observed.
2. The proposed use will not enhance or promote a deleterious effect upon adjacent areas through causing or encouraging blight, a chilling effect

upon other businesses and residents or a disruption in neighborhood development.

3. The establishment of the proposed use in the area will not be contrary to any program of neighborhood conservation.
4. The proposed use complies with all other applicable requirements of this Ordinance and of State or Federal Law.

### 1017. Water Protection, Impervious Surface Coverage, Storm Water Runoff, Riparian Setback

Every parcel in the Village is within the Watershed of Portage Lake and shall comply with the following requirements which are intended to protect Portage Lake and streams from pollution, to prevent runoff-laden pollutants from entering those water and to be consistent with the goals set forth in the Master Plan adopted by the Village Council and in the Portage Lake Watershed Forever Plan.

- A. Impervious surfaces limit — The percentage of the total land area of a parcel covered by impervious surfaces shall not exceed thirty-five percent (35%), except that the surface area covered by a dwelling, building, accessory building, and other such roofed structures shall not be considered to be impervious if the storm water runoff from those structures is treated and/or disposed of on the parcel by utilizing innovative storm water treatment methods such as rain gardens, ground water infiltration structures, or constructed wetlands.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

- B. Storm Water Runoff — Storm Water runoff from any parcel shall be directed to a non-lake side of any principal structure or accessory building, shall be treated and/or disposed of on the parcel so as to not increase the storm water runoff from the parcel above pre-development amounts, and shall be controlled by utilizing innovative storm water treatment methods such as rain gardens, groundwater infiltration structures and/or constructed wetlands.
- C. Riparian Setback — Each parcel in the Village which has a stream or creek within or adjacent to the property lines of the parcel shall be subject to the Riparian Setback of ten (10) feet from the banks of a stream or creek set forth in Section 7005.A.2, to the regulations and standards of Sections 7004.D, E and F and to the additional regulations and standards of Sections 7005.A.3 , 4 and 5;

### 1018. Utilities Required to be Underground

Newly installed utility service and utility service revisions or reinstallations necessitated by exterior alterations shall be underground.

### 1019. Fences

- A. Except as allowed in Section 1019.C or as exempted in Section 1019.D, any fence hereafter erected or placed on any parcel shall be equal to or less than 42" in height and shall consist of growth or open fencing with an open space/solid ratio of fifty percent (50%) or more. Such a fence shall be the only fence allowed to be

erected or placed on any parcel's side(s) which is adjacent to a road or which is adjacent to the shoreline of Portage Lake and may be erected or placed on any remaining sides of such parcel.

- B. Open Space/Solid Ratio means the amount of open space compared with the amount of adjoining solid material for each piece of fencing material. To meet the fifty percent (50%) or greater open space/solid ratio, each vertical piece of solid fencing has to have next to it an open space equal to at least half the width of that solid piece in a picket type of fence; or, each horizontal piece of solid fencing has to have either above or below it an open space equal to at least half the width of that solid piece in a rail type of fence.
- C. Fences of solid fencing material, growth or other commonly used fencing materials which are less than five (5) feet in height are allowed on any parcel's side(s) which is not adjacent to a road or adjacent to the shoreline of Portage Lake.
- D. Exempted from the provisions of this Section are chicken wire type fencing used to protect gardens, landscaping plants, bushes or trees and, during the winter season, temporary fencing used to control the drifting of snow or sand.
- E. A fence allowed in either Sections 1019.A or Section 1019.C or exempted in Section 1019.D is permitted to be located in the setback areas of a parcel provided that no part of the fence violates Section 1008 or Section 7005.B.3 .
- F. All fences shall comply with State laws and regulations.
- G. Except for fences allowed or permitted in Sections 1019.A or C or exempted in Section 1019.D, all other fences are prohibited in the Village, including chain link, welded steel, and PVC piping, provided, however, that upon the filing of a request for a variance for a fence otherwise prohibited, the Board shall have the authority to direct the issuance of a permit if the following criteria are met:
  - 1. The fence, as proposed, complies with the Height and Open Space/Solid ratio of Sections A and C and with State laws and regulations, and no part of the fence violates Section 1008.
  - 2. The applicant has made a showing of a specific and significant need for this type of fence.
  - 3. The adverse impact of this type of fence is mitigated by including in the permit requirements that the fencing shall be a color which is compatible with the surrounding area and shall be properly maintained by the land owner or it will be removed at the land owner's expense.

## 1020. Wireless Communication Equipment and Support Structures

Support structures, including antenna towers and masts, for cellular and other personal or business wireless communications services are permitted by Special Use Permit in the Residential District on parcels, or portions of parcels, located within the Village in a northerly direction from the centerline of Brown Road or from that centerline extended to the eastern edge of Glen Park. The collocation of wireless communication equipment on an existing wireless support structure or in an existing wireless communication support compound which meets the

requirements of Section 1020.A are permitted by land use permit in every zoning district. Exempt from the requirements of this Section are antenna towers and masts which are erected and operated as a residential accessory use and which are not more than fifty (50) feet in height as measured between their highest point and either their base at grade or a structure at grade if the tower or mast sits on that structure.

- A. Wireless communications equipment and support structures are permitted by land use permit on parcels in all zoning districts if all of the following requirements are met:
  1. The wireless communications equipment will be collocated on an existing wireless communications structure or in an existing equipment compound;
  2. The existing wireless communications support structure or existing equipment compound is in compliance with this Ordinance or was approved by the Administrator;
  3. The proposed collocation complies with the terms and conditions of any previous final approval of the wireless communications support structure or equipment compound by the Administrator or the Planning Commission; and,
  4. The proposed collocation will not do any of the following:
    - a. increase the overall height of the wireless communications support structure by more than twenty (20) feet or 10 percent (10%) whichever is greater;
    - b. Increase the width of the wireless communications support structure by more than the minimum necessary to permit the collocation; or,
    - c. Increase the area of the existing equipment compound to greater than two thousand five hundred (2500) square feet.
- B. The Planning Commission, in making its decision whether to recommend the approval of a Special Use Application for a wireless communication services equipment compound and support structure, and the Village Council, in making its decision whether to approve such an application, shall apply the below listed requirements in addition to the procedures, regulations and standards set forth in Article 86.
  1. The Special Use Application shall have the below listed items as attachments.
    - a. A statement establishing the legal ownership of the proposed equipment compound and support structure and a binding commitment that the applicant, its agents, successors, and assigns shall report any changes in the legal ownership of the support structure within thirty (30) days of the effective date of any such change.
    - b. A visual impact analysis, prepared by or at the direction of the applicant, which shall include graphic depictions of the anticipated visual appearance of the support structure and compound from

important vantage points in the surrounding area. The methodology used in preparing the analysis shall be subject to review and approval by the Administrator.

- c. A detailed factual statement establishing that it is not economically feasible to provide equivalent service by collocating the wireless communication equipment on an existing tower.
  - d. Documentation of any lighting proposed to be installed on the support structure and proof that such lighting is required by Federal Aviation Administration (FAA) or Federal Communication Commission (FCC) regulations.
  - e. Documentation that the proposed wireless communication equipment compound and/or support structure complies with FAA or FCC regulations.
2. A cellular phone or other personal and business communications services support structure shall be exempt from the height limits of Section 1006, provided that its height shall not exceed the minimum height necessary to serve its intended function.
  3. The support structure and any accessory building housing equipment needed for operation of the wireless communication system shall not exceed the floor area and height minimally necessary for such equipment and shall be of a size, type, color and exterior material which are aesthetically and architecturally compatible with the surrounding area and as minimally obtrusive as possible.
  4. The support structure shall be either painted or have a galvanized finish so as to be as unobtrusive as possible. The painting of towers less than five hundred (500) feet in height in alternate bands of orange and white shall be permitted only if specifically required by FAA or FCC regulations.
  5. The owner and/or operator shall agree to permit the use of the support structure by other personal or business communications services providers, including local government agencies, on reasonable terms so long as such use does not interfere with the reasonable use of that structure by the owner and/or operator.
  6. The wireless communication support structure shall be no closer to any dwelling or to any property line than the distance equal to the height of the structure measured from its base at grade to its highest point of elevation.
- C. As a condition of approving an application for a Special Use Permit for wireless communications services or supporting structures, the Village Council shall require:
1. the owner either to deposit funds in escrow with the Village or to provide an insurance bond satisfactory to the Village's Attorney, to ensure that the wireless communications equipment compound and support structure shall be removed in accordance with Section 1020.C.4. Such escrow deposit or insurance bond shall be in an amount equal to one and one-

quarter (1.25) times the estimated cost of removal of such compound and structure at the time of approval. Such escrow deposit or bond shall be maintained by any successor owner.

2. the owner to agree in writing to lower the height of the support structure if, in the future, the height required for the support structure to serve its intended function decreases from the installed height as a result of technological advancements.
3. the owner to agree to provide and maintain landscaping to accomplish screening of an equipment center.
4. the owner to agree in writing to remove any wireless communication equipment compound and support structure within a three month period after being given notice under the provisions of MCL 125.3103(3), of a written decision of the Village Council which complies with the following requirements:
  - a. the decision is issued after a public hearing;
  - b. the decision finds that the wireless communication equipment and support structure have either ceased to operate for their original use or have been abandoned; and,
  - c. the decision orders that the wireless communication equipment compound and support structure shall be removed.

## 1021. Motels or Hotels Changed into Dwelling Units for Lease or Sale

An existing motel or hotel structure which is changed into permanently separated dwelling units shall be permitted in the Commercial Residential District provided that the following requirements and all other requirements and regulations of this Ordinance, but not including the requirements of Section 5004.E.1 and Section 5004.F, are met.

### A. Definitions

1. CONVERTED DWELLING UNIT means a permanently separated unit converted from an existing structure which consists of one or more rooms and bathroom facilities and kitchen facilities designed for occupancy by one family for living purposes.
2. KITCHEN means any room principally used or principally intended or designed to be used for cooking or the preparation of food. The presence of a stove, oven, refrigerator and sink or the existence of utility connections suitable for the installation of each of those items shall be considered as establishing a kitchen. Kitchen does not include a bar, pantry, butler pantry or bathroom.

### B. Minimum Unit Size — The following minimum unit sizes shall apply to converted units:

1. Each unit, including a One Bedroom Unit, shall have a minimum floor area of six- hundred (600) square feet.
2. Each additional Bedroom Unit shall have a minimum additional one- hundred and fifty (150) square feet of floor area.

3. Each unit shall have a minimum width of twenty (20) feet at its shortest side.
4. Each unit shall contain a toilet and lavatory facility and each dwelling unit shall also contain a shower and/or bathtub and kitchen facilities.
5. Each unit shall have a separate meter for utility billing purposes.
6. There shall be a minimum of two (2) off-street parking spaces for each unit.
7. Accessory buildings or structures which served the motel or hotel prior to conversion may be subject to being demolished as a condition of the approval of a permit for the requested conversion if necessary to meet off-street parking, landscaping, or other applicable site design requirements.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

## 1022. Uses or Activities Not Expressly Permitted

Any use, use of land, structure or development activity not expressly permitted by this Ordinance is prohibited, unless the Administrator or the Planning Commission finds that the proposed use and/or activity is substantially similar or identical in character to a use or activity listed in this Ordinance. Any person with an ownership interest in a parcel may petition the Planning Commission under Section 9801 for consideration of an amendment to the Ordinance to include a proposed use or activity in one (1) or more zoning districts either as a Permitted Use or as a Special Use. The Planning Commission and the Village Council may consider an appropriate amendment to the Ordinance but are not required to do so.

## 1023. Lighting Standards

- A. Purpose: The purpose of this Section is to protect the health, safety and welfare of the public by recognizing that buildings and sites need to be illuminated for safety, security and visibility for pedestrians and motorists. This Section provides standards for various forms of lighting that will minimize light pollution, maintain safe nighttime driver performance on public roadways, preserve the restful quality of nighttime by eliminating intrusive artificial light and lighting that unnecessarily contributes to “sky glow”, reduce light pollution and light trespass from light sources onto adjacent properties, conservation of electrical energy; and curtail the degradation of the nighttime visual environment.
- B. Applicability: The standards in this Section shall apply to any light source that is visible from any property line, or beyond, for the site from which the light is emanating. The Zoning Administrator shall review any building or site to determine compliance with the requirements under this Section. Whenever a person is required to obtain a building permit, electrical permit for outdoor lighting or signage, a special land use approval, subdivision approval or site plan approval from the Village, the applicant shall submit sufficient information to enable the Zoning Administrator to determine whether the proposed lighting will comply with this Section.

- C. Definitions: The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
1. Canopy Structure: Any overhead protective structure which is constructed in such a manner as to allow pedestrians/vehicles to pass under.
  2. Footcandle: A unit of illumination produced on a surface all points of which are one foot from a uniform point source equivalent to one candle in brightness of illumination.
  3. Flood Light: A fixture designed to "flood" a well-defined area with light.
  4. Glare: The sensation produced by a bright source within the visual field that is sufficiently brighter than the level to which the eyes are adapted to cause annoyance, discomfort, or loss in visual performance and visibility; blinding light. The magnitude of glare depends on factors such as the size, position, brightness of the source, and on the brightness level to which the eyes are adapted.
  5. Lamp: The component of the luminaire that produces the actual light including luminous tube lighting.
  6. Light Fixture: The assembly that holds a lamp and may include an assembly housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and a refractor or lens. A light fixture also includes the assembly for luminous tube and fluorescent lighting.
  7. Light Pollution: Artificial light which causes a detrimental effect on the environment, such as enjoyment of the night sky or causes undesirable glare or unnecessary illumination of adjacent properties.
  8. Light Trespass: The shining of light produced by a luminaire beyond the boundaries of the property on which it is located.
  9. Luminaire: The complete lighting system including the lamp and light fixture.
  10. Luminous Tube Lighting: Gas filled tubing which, when subjected to high voltage, becomes luminescent in a color characteristic of the particular gas used, e.g., neon, argon, etc.
  11. Outdoor Light Fixtures: Outdoor artificial illuminating devices, outdoor fixtures, lamps and other similar devices, permanently installed or portable, used for flood lighting, general illumination or advertisement.
  12. Shielded Fixture: Outdoor light fixtures shielded or constructed so that light rays emitted by the fixture are projected below the horizontal plane passing through the lowest point on the fixture from which light is emitted (e.g. "shoebox-type" fixtures). A luminaire mounted in a recessed fashion under a canopy or other structure such that the surrounding structure effectively shields the light in the same manner is also considered fully shielded for the purposes of this Section.
  13. Sky Glow: A glow in the night sky deriving from an artificial source.

14. Spot Light: Any light fixture or lamp that incorporates a reflector or refractor to concentrate the light output into a directed beam in a particular direction.
  15. Wall Pack: An unshielded fixture that is typically wall-mounted and used to illuminate a large area.
- D. Submittal Requirements: The following information must be included for all site plan submissions and where full site plan approval is not required, some or all of the items may be required by the Zoning Administrator:
1. Location of all freestanding, building-mounted and canopy light fixtures on the site plan and building elevations.
  2. For parking lots greater than 7,500 square feet and abut a public park, or residential district, a photometric grid overlaid on the proposed site plan indicating the light intensity throughout the site (in foot-candles). Measurements must be at ground level and shown at ten-foot spacing.
  3. Specifications and details for the type of fixture being proposed including the total lumen output, type of lamp and method of shielding.
  4. Use of the fixture proposed.
  5. Any other information deemed necessary by the Zoning Administrator to determine compliance with provisions of this Section.
- E. Standards: Unless exempted under Subsection F, Exemptions, all lighting must comply with the following standards:
1. Freestanding Pole Lighting
    - a. Exterior lighting shall be fully shielded and directed downward to prevent off-site glare. Fixed (not adjustable), downward directed, metal halide, halogen or LED, shoebox fixtures shall be used in an effort to maintain a unified lighting standard throughout the Village and prevent sky glow.
    - b. The intensity of light shall not exceed one (1) footcandle at any perimeter property line. Where the site abuts a service drive or other public right-of-way and the adjacent property located across said service drive or public right-of-way is not zoned or used for residential purposes, the intensity of light shall not exceed five (5) footcandles at the perimeter property line.
    - c. The Planning Commission may approve decorative light fixtures as an alternative to shielded fixtures when it can be proven that there will be no off-site glare and the proposed fixtures are necessary to preserve the intended character of the site.
    - d. The maximum height of parking lot light fixtures shall be twelve (12) feet, except that the Planning Commission may permit a maximum height of twenty (20) feet when the poles are no closer than one hundred (100) feet to a residential district and are compatible with the character of the surrounding area.

- e. Parking lot poles shall be located in parking lot islands or in the periphery parking lot area. Light poles shall be prohibited in parking spaces.
  - f. Except where used for security purposes, all commercial outdoor lighting fixtures, existing or hereafter installed and maintained upon private property within the Commercial Residential district shall be turned off between 11:00 p.m. and sunrise, except where such use continues after 11:00 p.m. but only for so long as such use continues.
  - g. The Zoning Administrator has the discretion to require the re-direction of existing light fixtures after installation when it is determined that the fixture is creating off-site glare.
2. Building-Mounted Lighting
- a. Building-mounted lighting shall be fully shielded and directed downward to prevent off-site glare. Fixed (not adjustable), downward directed, metal halide or LED fixtures shall be used in an effort to maintain a unified lighting standard throughout the Village and prevent “sky glow.”
  - b. The intensity of light shall not exceed one (1) footcandle at any property line. Where the site abuts a service drive or other public right-of-way and the adjacent property located across said service drive or public right-of-way is not zoned or used for residential purposes, the intensity of light shall not exceed five (5) footcandles at the perimeter property line.
  - c. The Planning Commission may approve decorative light fixtures as an alternative to shielded fixtures when it can be proven that there will be no off-site glare and the proposed fixtures will improve the appearance of the site or is necessary for security purposes.
  - d. The intensity of lighting under roof eaves, awnings, porticos, or other structural projections shall not exceed ten (10) footcandles.
  - e. Luminous tube, LED, and exposed bulb lighting is prohibited as an architectural detail on all buildings (e.g. along the roof line and eaves, around windows, etc). unless approved by the Planning Commission upon showing that the treatment will enhance the appearance of the building and surrounding area.
  - f. Window lighting shall not be of a flashing, moving, or intermittent type.
  - g. The Zoning Administrator has the discretion to require the re-direction of existing light fixtures after installation when it is determined that the fixture is creating off-site glare.
3. Gas station canopy lighting.
- a. All fixtures must be recessed into the canopy and the lens shall not extend below the lowest part of the fixture.

- b. Gas station canopy lighting must comply with Section 1023(E)(2).
- F. Exemptions. The following are exempt from the lighting requirements of this Section, except that the Zoning Administrator may take steps to eliminate the impact of the exempted items when deemed necessary to protect the health, safety and welfare of the public:
1. Sports field/court lighting provided they are in use no later than 10:00 p.m.
  2. Swimming pools.
  3. Holiday decorations when removed within 15 days of said holiday.
  4. Window displays without glare.
  5. Shielded pedestrian walkway lighting.
  6. Single-family and two-family residential lighting.
  7. Public streetlights.
  8. Certain decorative fixtures, such as building mounted carriage lights, using lamps with low wattages do not have to be shielded. These include incandescent lamps of 160 watts or less, glass tubes filled with neon, argon and krypton and any other light source of 50 watts or less when approved by the Planning Commission. Decorative luminaries above 50 watts shall have internal and/or external reflectors that shield the light source.
- G. Lamp or Fixture Substitution. Should any light fixture regulated under this Section, or the type of light source therein, be changed after the permit has been issued, a change request must be submitted to the Zoning Administrator for approval, together with adequate information to assure compliance with this Ordinance, which must be received prior to substitution.

[Section Added by Ordinance Number 01 of 2023, effective May 04, 2023]

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## ARTICLE 18: GENERAL ZONING DISTRICT PROVISIONS

### 1801. Establishment of Districts

The Village is hereby divided into the following districts as shown on the Official Zoning Map:

- A. Residential districts:
  - 1. Residential District
- B. Commercial districts:
  - 1. Commercial Residential District
- C. Overlay Zone:
  - 1. Portage Lake Overlay Zone

### 1802. Provision for Official Zoning Map

For the purpose of this Ordinance, the zoning districts as provided in Section 1801 of this Ordinance are bounded and defined as shown on a map entitled "Official Zoning Map of Onekama Village", a copy of which accompanies this Ordinance and which, with all explanatory matter thereon, is hereby incorporated into and made a part of this Ordinance by reference.

### 1803. Identification of Official Zoning Map

The Official Zoning Map shall be identified by the signature of the Village President, attested to by the Village Clerk, and shall bear the seal of the Village under the following words: "This is to certify that this is the Official Zoning Map referred to in the Zoning Ordinance of Onekama Village", together with the effective date of this Ordinance.

### 1804. Changes to Official Zoning Map

If, in accordance with the procedures of this Ordinance and of the Act, a change is made in a zoning district boundary, such change shall be made to the Official Zoning Map by or under the direction of the Village President promptly after the amendment authorizing such change shall have been adopted and published. Any change in the Official Zoning Map must comply with the amendment requirements of Article 98 and of the Act.

### 1805. Authority of Zoning Map

Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map shall be located in the Onekama Village Hall and shall be the final authority as to the current zoning status of any land, parcel, lot, district, use, building or structure in the Village.

### 1806. Replacement of Official Zoning Map

In the event the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes made thereto, the Village Council may, by resolution, authorize the transcribing and drawing of a duplicate official zoning map which shall

supersede the prior Official Zoning Map. The duplicate Official Zoning Map may correct drafting or other errors or omissions on the prior Official Zoning Map, but no such correction shall have the effect of amending the Zoning Ordinance or the prior Official Zoning map. The duplicate Official Zoning Map shall be identified by the signature of the Village President, attested by the Village Clerk, and bear the seal of the Village under the following words: "This is to certify that this is the Official Zoning Map referred to in the Zoning Ordinance of Onekama Village amended and duplicated on February 12, 1993, which replaces and supersedes the Official Zoning Map, adopted on May 3, 1990."

### 1807. Rules of Interpretation

Where uncertainty exists as to the boundaries of zoning districts as shown on the Official Zoning Map, the following rules of interpretation shall apply:

- A. A boundary indicated as approximately following the centerline of a highway, road, alley or easement shall be construed as following such line.
- B. A boundary indicated as approximately following a recorded parcel line or a property line shall be construed as following such line.
- C. A boundary indicated as approximately following the corporate boundary line of a city, village or township shall be construed as following such line.
- D. A boundary indicated as following a railroad shall be construed as being the centerline of the railroad right-of-way.
- E. A boundary indicated as a shoreline shall be construed as following such shoreline, and in the event of change in a shoreline shall be construed as following the actual shoreline.
- F. A boundary indicated as following the centerline of a water body shall be construed as following such centerline at the time of the interpretation.
- G. A boundary indicated as parallel to, or an extension of, a feature indicated in corrections A through F above shall be so construed.
- H. A distance not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.

### 1808. Interpretation by the Board

When a physical or cultural feature existing on the ground is at variance with that shown on the Official Zoning Map, or when uncertainty exists as to a Zoning District boundary in any circumstance not covered by Section 1807.A through H above, or when a question involves an interpretation of Section 1807.A through H above, the Board shall interpret the Zoning District boundary.

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## ARTICLE 40: RESIDENTIAL DISTRICT

### 4001. Purpose

It is the intent of this district to provide for developed neighborhoods for residential and certain controlled retail and service businesses in certain parts of the Village, to promote a compatible arrangement of land uses for homes, and to keep neighborhoods relatively quiet and free from detrimental uses.

### 4002. Permitted Uses

Only the following uses shall be permitted, by permit, as specified in Article 84:

- A. Accessory Buildings
- B. Boarding/Rooming House
- C. Educational Services
- D. Fences
- E. Parks
- F. Religious Organizations
- G. Single Family Dwellings, which may include any of the following uses for which a separate permit is not required:
  - 1. Home occupations
  - 2. Parking for automobiles which are licensed to the parcel owner and/or to dwelling occupants and which are for their use.
  - 3. Storage of recreational vehicles, boats, boat trailers or trailers which are kept for use by the dwelling occupant and licensed to the parcel owner or dwelling occupant.
- H. State licensed residential facilities, to the extent required by the Act under MCL 125.3206
- I. Wireless communications equipment collocated on an existing wireless support structure.

[Section Amended by Ordinance Number 01 of 2023, effective May 04, 2023]

### 4003. Special Uses

Only the following uses shall be permitted, by Special Use Permit, as specified in Article 86:

- A. Duplexes
- B. Finance, Insurance, Real Estate, and Licensed Professionals
- C. Group childcare homes, to the extent provided for by the Act under MCL 125.3206
- D. Multiple Family Dwellings
- E. Retail Trade
- F. Support Services for Retail Trade, Finance, Insurance, Real Estate and Licensed Professionals

- G. Wireless communications equipment compounds and support structures on parcels, or portions thereof, located within the Village in a northerly direction from the centerline of Brown Road or from that centerline extended to the eastern edge of Glen Park.

[Section Recodified by Ordinance Number 01 of 2023, effective May 04, 2023]

#### 4004. Regulations and Standards

The following regulations shall apply to permitted uses and to special uses in this District.

- A. Parcel Area — No structure shall be established on any parcel less than twelve thousand (12,000) square feet in area.
- B. Parcel Width — The minimum parcel width shall be seventy-five (75) feet, except for a parcel which is a lot of record.
- C. Parcel Road Frontage — The parcel must have frontage on a road.
- D. Yard and Setback Requirements – The following requirements shall apply to every parcel, building or structure.
  - 1. Front Yard: The minimum setback shall not be less than twenty-five (25) feet from the front property line, or fifty-eight (58) feet from the centerline of a road, whichever is greater.
  - 2. Side Yards: The minimum setback for each side yard shall not be less than ten (10) feet, provided, however, that Section 1008 is complied with on corner parcels.
  - 3. Rear Yard: The minimum setback shall not be less than fifteen (15) feet.
  - 4. Setbacks are measured from the property line to the building which includes its eaves to the drip line, its awnings, and its attached porches, decks and steps whether or not covered by a roof.
- E. Dwelling minimum floor area and width requirements —The following requirements shall apply to any dwelling hereafter erected:
  - 1. Each single family dwelling and each permanently separate unit contained in a duplex or a multiple family dwelling shall have a minimum of nine hundred (900) square feet of floor area.
  - 2. Each single family dwelling, and each permanently separate unit contained at ground level in a duplex or multiple family dwelling shall have a minimum of six hundred (600) square feet of floor area at ground level, or where applicable, at grade level.
  - 3. Each single family dwelling and each permanently separate unit contained in a duplex or multiple family dwelling shall have a minimum width of twenty (20) feet at its shortest side.

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## ARTICLE 50: COMMERCIAL RESIDENTIAL DISTRICT

### 5001. Purpose

It is the intent of this district to provide for an established commercial residential district and a downtown business area in certain parts of the Village, to promote a compatible arrangement of land uses for businesses and homes and to keep commercial areas free from detrimental uses.

### 5002. Permitted Uses

Only the following uses shall be permitted, by permit, as specified in Article 84:

- A. Accessory Buildings
- B. Agricultural Services
- C. Bed & Breakfast Establishment
- D. Boarding/Rooming House
- E. Duplexes
- F. Eating and Drinking Establishment
- G. Fences
- H. Finance, Insurance, Real Estate and Licensed Professionals and Supporting Services
- I. Forestry Services
- J. Hotel Boutique
- K. Marinas
- L. Multiple Family Dwellings
- M. Parks
- N. Public Administration
- O. Retail Trade and Supporting Services
- P. Signs
- Q. Single Family Dwellings, which may include any of the following uses for which a separate permit is not required:
  - 1. Home occupations
  - 2. Parking for automobiles which are licensed to the parcel owner and/or to dwelling occupants and which are for their use.
  - 3. Storage of recreational vehicles, boats, boat trailers or trailers which are kept for use by the dwelling occupant and licensed to the parcel owner or dwelling occupant.
- R. State licensed residential facilities, to the extent required by the Act under MCL 125.3206
- S. Transportation Services
- T. Wireless communications equipment collocated on an existing wireless support structure

[Section Amended by Ordinance Number 01 of 2023, effective May 04, 2023]

### 5003. Special Uses

Only the following uses shall be permitted by Special Use Permit, as specified in Article 86:

- A. Adult Book and Adult Video Stores
- B. Adult Cabarets
- C. Adult Live Entertainment Establishments
- D. Adult Mini Motion Picture Theaters
- E. Adult Motion Picture Theaters
- F. Adult Sexual Device Shops
- G. Any combination of Section 5003.A through Section 5003.F
- H. Communications but not including wireless communications equipment compounds or support structures
- I. Construction Firm
- J. Electric, Gas and Sanitary Services
- K. Group child care homes, to the extent provided for by the Act under MCL 125.3206
- L. Hotel
- M. Local and Interurban Passenger Transit
- N. Manufacturing
- O. Motel
- P. Trucking and Warehousing
- Q. Water Transportation except Marinas
- R. Wholesale Trade

[Section Amended by Ordinance Number 01 of 2023, effective May 04, 2023]

### 5004. Regulations and Standards

The following regulations shall apply to permitted uses and to special uses in this District.

- A. Parcel Area — No structure shall be established on any parcel less than twelve thousand (12,000) square feet in area.
- B. Parcel Width — The minimum parcel width shall be seventy-five (75) feet, except for a parcel which is a lot of record.
- C. Parcel Road Frontage — The parcel must have frontage on a road.
- D. Yard and Setback Requirements — The following requirements shall apply to every parcel, building or structure.
  - 1. Front Yard — The minimum setback shall not be less than zero (0) feet from the front property line, or thirty-three (33) feet from the centerline of a road, whichever is greater.
  - 2. Side Yard — The minimum setback for each side yard shall not be less than ten (10) feet, provided, however, that Section 1008 shall be complied with on corner parcels.

3. Rear Yard — The minimum setback shall not be less than fifteen (15) feet.
  4. Setbacks are measured from the property line to the building which includes its eaves to the drip line, its awnings, and its attached porches, decks, and steps whether or not covered by a roof.
- E. Dwelling minimum floor area and width requirements —The following requirements shall apply to any dwelling hereafter erected in this District.
1. Each single family dwelling and each permanently separate unit contained in a duplex or a multiple family dwelling shall have a minimum of nine hundred (900) square feet of floor area.
  2. Each single family dwelling, and each permanently separate unit contained at ground level in a duplex or multiple family dwelling shall have a minimum of six hundred (600) square feet of floor area at ground level, or where applicable, at grade level.
  3. Each single family dwelling and each permanently separate unit contained in a duplex or multiple family dwelling shall have a minimum width of twenty (20) feet at its shortest side.
- F. Every building and structure hereafter erected shall have a minimum of nine hundred (900) square feet of floor area and shall have a minimum width of twenty (20) feet at its shortest side.

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## ARTICLE 70: PORTAGE LAKE OVERLAY ZONE

### 7001. Purposes

This Portage Lake Overlay Zone is enacted to:

- A. protect the water bodies in the Village of Onekama, including Portage Lake and streams, from pollution;
- B. prevent runoff-laden pollutants from entering those waters;
- C. to preserve plant materials necessary for removal of high level of nutrients which would otherwise pollute those waters;
- D. protect the shoreline and banks of those waters from erosion;
- E. provide for maintenance of the shoreline;
- F. provide for development of waterfront uses consistent with the goals set forth in the Master Plan adopted by the Village Council and in the Portage Lake Watershed Forever Plan; and,
- G. implement fully the purposes of this Article by mandating that whenever other provisions or language contained elsewhere in this Ordinance conflict with the provisions or language of this Article, the provisions and language of this Article shall apply.

### 7002. Boundaries

This Overlay Zone shall encompass all parcels and portions of parcels located between Portage Lake and M-22 from the east boundary of the Village to the west boundary of the Village.

### 7003. Permitted and Prohibited Uses

- A. Permitted Uses — Only the following uses and the permitted uses listed in Sections 5002. C, D, J, N, P, R, AND T shall be permitted, by permit, as specified in Article 84:
  1. Accessory Building
  2. Fences
  3. One temporary seasonal dock on a vacant nonconforming lot of record for the private use of the landowner provided that the dock is removed by December 1 of each year and that the dock is authorized by a Federal permit if required by law
  4. Parks
  5. Single Family Dwelling, which may include any of the following uses for which a separate permit is not required.
    - a. Home Occupations
    - b. One temporary seasonal dock per parcel for the private use of the dwelling owner provided that the dock is removed by December 1 of each year and that the dock is authorized by a Federal permit if required by law

- c. Parking for automobiles which are licensed to the parcel owner and/or to dwelling occupants and which are for their use.
- d. Storage of recreational vehicles, boats, boat trailers or trailers which are for use by the dwelling occupant and licensed to the parcel owner or dwelling occupant.

[Subsection Amended by Ordinance Number 01 of 2023, effective May 04, 2023]

B. Special Uses - only the following uses shall be permitted by Special Use Permit, as specified in Article 86:

- 1. Duplexes
- 2. Eating and Drinking Establishment
- 3. Finance, Insurance, Real Estate and Licensed Professionals and Supporting Services
- 4. Hotel
- 5. Marinas
- 6. Motel
- 7. Multiple Family Dwellings
- 8. Retail Trade and Supporting Services
- 9. Water transportation

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

[Subsection Amended by Ordinance Number 01 of 2023, effective May 04, 2023]

C. Prohibited Uses — The below listed uses of any privately owned parcel or portion of a privately owned parcel which is adjacent to Portage Lake shall be prohibited, except that a commercial Marina which is otherwise permitted under this Ordinance and complies with State law is excluded from the prohibitions of Sections 7003.C.1, 2 and 3:

- 1. Provision of access to the water's edge of Portage Lake for select members of any private club, private association, or private entity of any type which consists of select members;
- 2. Provision of access to the water's edge of Portage Lake for property owners who reside within a development area, subdivision, or plat or who are members of a property owners association but who do not own the parcel which is being used to provide such access; and,
- 3. Provision of either boat ramp access to the waters of Portage Lake or docking facilities on Portage Lake for boats or other water born vehicles for any person other than the parcel owner.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

#### 7004. Regulations and Standards

The following additional regulations and standards shall apply to any parcel or portion of any parcel which is located within the Portage Lake Overlay Zone and to any structure located on such a parcel or portion thereof:

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

A. Parcel Width — The minimum parcel width shall be seventy-five (75) feet except that for a platted lot of record, the minimum width shall be the platted width. For

a parcel which is adjacent to Portage Lake, the minimum width shall be measured at the shoreline.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

- C. Impervious Surface Coverage — The percentage of the total land area of a parcel covered by impervious surfaces shall not exceed thirty-five percent (35%), except that the surface area covered by a dwelling, building, accessory building, and other such roofed structures shall not be considered to be impervious if the storm water runoff from those structures is treated and/or disposed of on the parcel by utilizing innovative storm water treatment methods such as rain gardens, ground water infiltration structures, or constructed wetlands.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

C. Yard and Setback Requirements

1. Waterfront yard for a parcel adjacent to Portage Lake — The minimum setback shall be the Riparian Setback set forth in Section 7005.A.1.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

2. Side yards — The minimum setback for either side yard shall not be less than (10) feet.

3. Rear yard.

- a. For a parcel which has a side adjacent to Portage Lake and a side adjacent to M22, the minimum setback for the rear yard shall not be less than fifteen (15) feet from the road side property line or forty-eight (48) feet from the centerline of the road, whichever is greater.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

- b. For a parcel not adjacent to Portage Lake, the minimum setback for the rear yard shall be fifteen (15) feet.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

4. Front Yard for a parcel which is not adjacent to Portage Lake — The minimum setback shall not be less than fifteen (15) feet from the road side property line or forty-eight (48) feet from the centerline of the road, whichever is greater.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

- D. It shall be the responsibility of the parcel owner to maintain to the fullest extent possible the healthy state of any natural ground cover or native vegetation which exists within ten (10) feet of the shoreline of Portage Lake and/or within ten (10) feet of the banks of a stream or creek and, when necessary, to replace unhealthy or dead plants with native vegetation that is equally effective in retarding runoff and preventing erosion.

- E. Prior to grading or other construction activities on any parcel, the natural vegetation within ten (10) feet of the shoreline of Portage Lake and/or within ten (10) feet of the banks of a stream or creek shall be fenced with silt fencing and construction barrier fencing.

- F. Dead, diseased, unsafe or fallen trees and non-native exotic or noxious trees, plants and shrubs, including poison ivy, poison sumac, purple loosestrife, and phragmites, should be removed at the discretion of the landowner. However, landowners are encouraged to notify the Zoning Administrator before removing

any trees within ten (10) feet of a water body. Where trees are removed within 10 feet of a water body, the stumps of those trees shall not be removed below ground level.

- G. On a nonconforming lot of record on which the principal structure is a temporary seasonal dock, an accessory building shall not exceed six and one half (6 ½) feet measured from the ground to the highest point of the roof and shall be secured to the ground either on a foundation the bottom of which is at least thirty (30) inches below ground level or by tie downs and screw-in soil anchors.

[Section 7004.G Added by Ordinance Number 01 of 2016, effective March 18, 2016]

## 7005. Riparian Parcels, Additional Regulations and Standards

The following additional regulations and standards shall apply to each parcel or portion of a parcel which is adjacent to Portage Lake or which has a stream or creek running adjacent to or through it and to all structures, permitted uses, and special uses on such parcels or portions of parcels.

- A. Riparian Setbacks, driveways, prohibited items and activities
1. The Riparian Setback from the shoreline of Portage Lake shall be thirty (30) feet measured on a horizontal plane landward from the Ordinary High-Water Mark.
  2. The Riparian Setback from the banks of streams or creeks shall be ten (10) feet.
  3. It shall be prohibited within any Riparian Setback to store or accumulate compost piles, manure, fertilizers, other nutrient sources, unwholesome substances, motorized vehicles, motorized boats and other potentially polluting materials.
  4. The below listed items or activities are prohibited within the Riparian Setback except as specifically allowed by Section 7005.A. 5 below:
    - a. Structures
    - b. Patios
    - c. Paved sidewalks or walkways
    - d. Driveways for motorized vehicles
    - e. Operation of motorized vehicles
    - f. Changing of motor oil for, or refueling of, motorized vehicles or watercraft
  5. As an exception to the prohibitions of Section 7005.A.4 above, the following structures, items, and activities are allowed within the Riparian Setback:
    - a. A fence allowed, permitted or exempted by Section 1019.
    - b. A driveway otherwise permitted under this Ordinance and under State and Federal law which is necessary to access a boat ramp;
    - c. The operation of motorized vehicles on a driveway allowed by Section 7005.A.5.a;

- d. A sea wall otherwise permitted under this Ordinance and for which a permit has been granted by the appropriate State or Federal agency;
  - e. One temporary seasonal boat dock otherwise permitted under this Ordinance and provided that the dock is authorized by a Federal permit if required by law;
  - f. A structure otherwise permitted under this Ordinance and under State or Federal law which is in a permitted commercial marina that is compliant with State law but only if the locating of that structure within the Riparian Setback is essential to the operation of that marina; and,
  - g. The activities of changing the motor oil of watercraft or refueling of watercraft in a permitted commercial marina that is compliant with State law but only if the locating of the performance of those activities within the Riparian Setback is essential to the operation of that marina.
- B. Riparian Buffer Strip — Each parcel or any portion of a parcel which is adjacent to Portage Lake shall comply with the following requirements concerning a Riparian Buffer Strip, the purpose of which is to protect Portage Lake and creeks and streams by reducing the infiltration of pollutants such as sediment, nutrients and organic matter, by preventing erosion, and by providing shade.
- 1. Planting of perennial native species of plants, shrubs and trees in a Riparian Buffer Strip is strongly encouraged.
  - 2. Every such parcel or portion of a parcel for which a land use permit, special use permit or variance is granted after the effective date of the amendment adding this section to the Ordinance shall have established upon it by the land owner a Riparian Buffer Strip, consisting solely of a strip of native vegetation ten (10) feet in width measured landward from the shoreline of Portage Lake and/or five (5) feet in width measured outward from the banks of any stream or creek, which Buffer Strip shall thereafter be maintained by the land owner in a healthy state and replaced as necessary.
  - 3. No structure, patio, driveway, sidewalk, or walkway or part thereof shall be allowed within a Riparian Buffer Strip except as specifically allowed, as follows:
    - a. A driveway, otherwise permitted under this Ordinance and under State or Federal law, which provides access to a boat ramp, shall be allowed to pass through a Riparian Buffer Strip.
    - b. An unpaved pathway which provides access to the shoreline shall be allowed to pass through a Riparian Buffer Strip.
    - c. One temporary seasonal boat dock, otherwise permitted under Section 7003.A.1.D or Section 7003.A.4, shall be allowed to be located at the lakeside edge of the Riparian Buffer Strip.

- d. A structure, otherwise permitted under this Ordinance and under State or Federal law in a permitted commercial marina that is compliant with State law, is allowed to be located within a Riparian Buffer Strip but only if the locating of that structure within the Riparian Buffer Strip is essential to the operation of that marina.
- C. Riparian Buffer Strip, Requirement for Future Issuance of Permits — No land use permit, special use permit or variance concerning any parcel or any portion of a parcel which is adjacent to Portage Lake shall be issued after the effective date of this provision unless the land owner shall be required in writing in the permit to establish on that parcel or portion of a parcel Riparian Buffer Strips ten (10) feet in width measured landward from the shoreline of Portage Lake and/or five (5) feet in width measured outward from the banks of a stream or creek, to maintain thereafter the native vegetation in such Riparian Buffer Strip in a healthy state, and to replace the native vegetation as necessary.

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## ARTICLE 80: NONCONFORMITIES

### 8001. Purpose

Within the Zoning Districts, there may be uses which existed lawfully before this Ordinance was adopted or amended and which would be prohibited under this Ordinance. Such a nonconforming use is declared to be a nonconformity which is incompatible with this Ordinance but which may be continued until the nonconforming use is discontinued or the structure associated with the nonconforming use is removed or is damaged to the extent that repair of the damage would require applying for a land use permit. There also exist structures and parcels which existed before this Ordinance was adopted or amended but which do not comply with size, setback or other regulations of this Ordinance. These nonconforming structures or parcels may continue until removed with intent to abandon. Such nonconforming uses and such nonconforming structures and parcels may be extended, reconstructed, structurally altered, expanded, enlarged or built upon only in strict compliance with this Article, and their continued existence shall not be used as grounds for any other purpose under this Ordinance.

### 8002. Extensions, Reconstructions, Structural Alterations, Expansions, Enlargements

During its existence, a nonconforming use or a nonconforming structure may be added to, extended, reconstructed, structurally altered, expanded or enlarged or a nonconforming parcel may be built upon only if it meets any one or combination of the following subsections and also complies with the corresponding numbered restrictions:

- A. If the nonconformity is a use which is not otherwise permitted in the Zoning District, then:
  1. the use and any structures associated with that use shall not be expanded more than fifty percent (50%) in size, hours of operation, level of service, or any other extension than that which existed at the time this Ordinance was adopted;
  2. the parcel associated with such use shall not be expanded or enlarged;
  3. such use shall not be expanded to a contiguous parcel; and,
  4. the expansion of the structure shall comply with all other provisions of this Ordinance.
- B. If the nonconformity is that the parcel is too small and already has existing structures that are associated with permitted or special uses allowed in the Zoning District, then:
  1. those structures shall not be expanded more than fifty percent (50%) of the ground area occupied by the structure at the time this Ordinance was adopted or, if less, expanded in such ground area as much as is possible without infringing on any applicable setback, impervious surface, or Riparian Buffer Strip requirements; and,

2. the expansion of the structure shall comply with all other provisions of this Ordinance.

Nothing in this Subsection is intended to prevent the acquisition of land adjacent to such a parcel either to bring the parcel into compliance or to lessen its nonconformity.

- C. If the nonconformity is the parcel is too small and the parcel is a “lot of record” which is vacant, then a land use permit may be issued if:
  1. The use is a permitted use in the Zoning District;
  2. All required prerequisite permits have been obtained;
  3. All size, height, setback, impervious surface, and Riparian Buffer Strip requirements for the Zoning District can be met; and,
  4. If not, then a variance must be obtained from the Board.
- D. If the nonconformity is the structure is too small, then a permitted or special use allowed in the Zoning District and associated with the structure shall not be expanded more than fifty (50) percent in hours of operation or level of service, or other similar extension than that which existed at the time this Ordinance was adopted. Nothing herein is intended to prevent any amount of addition to the size of the structure if:
  1. The size of the structure is the only nonconformity;
  2. The resulting structure is either in full compliance or is closer to compliance with size requirements; and,
  3. The resulting structure complies with all other provisions of this Ordinance.

### 8003. Repairs and Maintenance

Nothing in this Article of the Ordinance shall prevent a nonconforming structure from being repaired, reinforced, improved, maintained, or rehabilitated because of wear and tear, damage or deterioration, provided, however, that any nonconforming structure which is damaged by fire, act of God, or any other similar cause to the extent that repair of the damage would require applying for a permit shall be subject to Section 8004.

### 8004. Damage to a Nonconforming Structure

- A. If a nonconforming structure, which is not associated with a nonconforming use, is damaged by fire, act of God, or any other similar cause to the extent that repair of the damage would require applying for a permit, then the below listed actions shall be taken.
  1. The structure or parcel shall immediately be rendered safe and secure, or the structure shall forthwith be demolished and the parcel properly backfilled. All debris shall be removed from the parcel and disposed of in accordance with law.
  2. After compliance with Section 8004.A.1, the owner shall have a one year period from the date of damage within which either to apply for a land

- use permit or to demolish the structure completely, remove and dispose of all debris in accordance with law, and backfill properly the parcel.
3. If the structure is repaired, reconstructed or replaced within the preexisting footprint and within the preexisting height, then the nonconforming status of the structure and/or parcel shall continue to exist.
  4. If the structure is replaced or is rebuilt outside of the preexisting footprint and/or the preexisting height is exceeded, then the nonconformity will have ceased to exist and all general regulations, Zoning District regulations and standards, and use specifications of this Ordinance, as amended, must be met.
- B. If a structure associated with a nonconforming use is damaged by fire, act of God, or other causes to the extent repair of the damage would require applying for a permit, then the nonconforming use shall cease to exist and the below listed actions shall be taken.
1. The structure or parcel shall immediately be rendered safe and secure, or the structure shall forthwith be demolished and the parcel properly backfilled. All debris shall be removed from the parcel and disposed of in accordance with law.
  2. After compliance with Section 8004.B.1, the owner shall have a one year period from the date of damage within which either to demolish the structure completely, remove and dispose of all debris in accordance with law, and backfill properly the parcel, or to apply for a land use permit to repair, reconstruct or replace the structure in compliance with all general regulations, Zoning District regulations and standards, and use specifications of this Ordinance.
- C. Any reconstruction, rebuilding, repairing or replacement of a structure authorized pursuant to Section 8004.A.3, Section 8004.A.4, or Section 8004.B.2 above shall be completed within two (2) years of the date of damage to such structure, and resumption of use shall take place within ninety (90) days of completion of the project. The two (2) year period may be extended for up to an additional one (1) year period if an application is filed for a variance and if the Board makes a finding that one or more of the following conditions exist:
1. The delay could not be avoided because of weather;
  2. The delay was because of a criminal investigation;
  3. The delay was the result of a dispute between the owner and an insurance company concerning insurance coverage; or,
  4. The delay was the result of property held in probate.

#### 8005. Status of Certain Uses Which Existed Prior to This Ordinance

- A. There are uses which existed prior to this Ordinance but which are not permitted uses under this Ordinance. Of those uses, there are some which are listed as potential special uses in this Ordinance. Those existing uses, which are listed as

potential special uses in this Ordinance, shall not be considered to be nonconforming uses.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

- B. Those uses, or parts of uses, which existed prior to this Ordinance and are listed as special uses in this Ordinance, shall be considered to be an Approved Pre-existing Special Use with the configuration shown on a site plan drawn to reflect how the use existed at the time this Ordinance was adopted. Uses and parts of uses which are otherwise considered to be nonconforming prior to the adoption of this Ordinance and which are not considered to be an Approved Pre-existing Special Use shall continue to be nonconforming under this Ordinance.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

- C. An owner of an Approved Pre-existing Special Use under Section 8005.B shall, at no charge to the owner, obtain from the Planning Commission a Certification of a Site Plan reflecting how the use existed at the time of adoption of this Ordinance with identification of nonconforming parts, if any. In the case of a dispute over what facts existed at the time of adoption of this Ordinance, aerial photographs taken by Manistee County or other aerial photographs taken to the same or greater standards for mapping as the County's photos and taken after the County photos but before the adoption of this Ordinance shall be given the greatest weight as evidence to establish a certified site plan. For purposes of this section, the above mentioned photo(s) may be accepted as the Site Plan for the Approved Pre-existing Special Use Certification.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

- D. When a special use owner applies under Section 8615 to amend an Approved Existing Special Use Certification for expansion or change, a written Special Use Permit shall be prepared for the entire use and parcel. In reviewing the amendment application for expansion or change, the Planning Commission shall only review and act on the expansion or change portions of the application. If the application for amendment is approved, approved with conditions, denied or denied in part by the Village Council, the action shall not alter those parts of the Special Use that are shown on the Approved Existing Special Use Certification.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

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## ARTICLE 82: ADMINISTRATION OF THE ORDINANCE

### 8201. Purpose

The purpose of this Article is to provide the procedures for the administration of the Ordinance, issuance of permits, inspection of properties, collection of fees, handling of violations and enforcement of the provisions of this Ordinance and amendments thereto.

### 8202. Zoning Administrator

- A. Applicants for the office of Zoning Administrator (“Administrator”) shall be interviewed by the Village Council Personnel Committee which shall make its recommendations to the Village Council. The Village Council shall appoint, from the list of recommended applicants, an Administrator who shall serve such term, subject to such conditions, and at such rate of compensation as the Village Council shall determine.
- B. Any elected official of the Village and all members of the Board shall be ineligible for appointment to the office of Administrator, except to provide continuity of coverage as provided for in Section 8202.C below.
- C. To provide continuity of coverage in the event of the resignation, death, disability, vacation or disqualification of the Administrator, the Village Council shall appoint a Deputy Zoning Administrator who shall serve as interim administrator until either a new Administrator shall be appointed by the Village Council or the existing Administrator again assumes his or her duties.
- D. In issuing an order, requirement, decision or determination on any discretionary matter referred to the Administrator or upon which the Administrator is required to pass under this Ordinance and provided that the standards set forth in Section 8404 and Section 8405 are complied with, it shall be sufficient for the Administrator to conclude reasonably that the proposed order, requirement, decision or determination is compatible with the present uses of adjacent parcels, is consistent with and promotes the intent and purposes of this Ordinance, is compatible with the natural environment, is consistent with the capabilities of affected public services and facilities and protects the public health, safety and welfare, and is consistent with the constitutional requirements of due process and equal protection of the law.

### 8203. Zoning Administrator Duties, Enforcement, Inspections, Reports

- A. It shall be the duty of the Administrator to administer and enforce the provisions of this Ordinance. To ensure compliance with the Ordinance, the Administrator shall have the authority to conduct inspections of structures or premises which are the subject of an application for a land use permit or which are the subject of a land use permit but for which an occupancy permit has not been issued.
- B. The Administrator shall submit to the Village Council monthly reports explaining fully the type and nature of all permits issued, the nature and extent of violations

of this Ordinance, and, as appropriate, the type and nature of nonconforming uses and structures.

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## ARTICLE 84: PERMITS

### 8401. Land Use Permits

No parcel shall be occupied or used, no use shall hereafter be changed to a different use, and no structure shall hereafter be erected, structurally altered, or relocated in the Village under the provisions of this Ordinance until a permit authorizing the same shall have been issued by the Administrator.

### 8402. Land Use Permit Applications

- A. If a use is listed in a respective land use district as a Permitted Use, anyone with an interest in a parcel may apply for a land use permit under this Section. Permit applications shall be submitted to the Administrator on an Application Form prepared by the Administrator at the direction of the Village Council.
- B. The Administrator shall require that an application include a completed Application Form, signed by the landowner or by a person authorized by the landowner in an attached document, copies of plans, specifications and such other information as the Administrator may deem necessary. Such other information shall include but not be limited to:
  1. A plot plan or a site plan, with detail commensurate with the complexity of the proposed project as determined by the Administrator:
    - a. A Plot Plan shall be submitted for structural alterations and improvements to existing structures or for proposed single family dwellings, duplexes and accessory structures and shall include a scaled drawing showing the location and dimensions of the parcel, the location and dimensions of the existing and/or proposed structures, driveways, and sidewalks, and the location of the well.
    - b. A Site Plan signed by an engineer or architect licensed in Michigan shall be submitted for proposed multiple family dwellings and for commercial uses and buildings and shall include the information required by Section 8606.
  2. A copy of a registered survey of the parcel, prepared by a Michigan registered land surveyor, subject to waiver by the Administrator if parcel size or parcel lines are not a factor in determining setbacks or if the simplicity of the proposed project does not necessitate a survey;
  3. The legal seating and/or sleeping capacity of the proposed use or structure, if applicable;
  4. A concise statement of all operations and uses which will be conducted on the parcel and/or associated with the structures;
  5. A concise statement of the services, if any, to be offered to the public;
  6. For a parcel or a portion of a parcel in the Portage Lake Overlay Zone which is adjacent to Portage Lake and/or has a stream running adjacent to or through it:

- a. a copy of the wetland permit, if required by State or Federal law; and,
    - b. a statement signed by the landowner that any Riparian Buffer Strip required by Section 7005.B either has been established and will be maintained or has not been established but will, as a condition of issuance of the permit, be established by a date certain and be maintained thereafter;
  - 7. The name, address, and telephone number of the applicant and of the owner, if different;
  - 8. A nonrefundable fee in an amount established from time to time by the Village Council;
  - 9. Copies of permits from the Manistee County Soil Erosion and Sedimentation Control and from District 10 Health Department and copies of permits or letters showing approval, tentative approval, or letters of understanding for concurrent approval with the Village Council by the Michigan Department of Environmental Quality and other applicable agencies where approval is required; and,
  - 10. Any other information required by this Ordinance.
- C. The application shall show the proposed use and structures and how they will comply with all aspects of this Ordinance.

#### **8403. Site Plan Approval by Administrator, Standards**

A Site Plan required to be submitted as part of the application for a Land Use Permit under Section 8402.B.1.b shall be subject to review by the Administrator to ensure that it contains all of the applicable elements, documents and information specified in Section 8606; provided, however, that if the review reveals that a discretionary decision might be involved in the approval of the Site Plan, the Administrator shall refer the Site Plan to the Planning Commission for approval. Except when a discretionary decision might be involved in the approval of a Site Plan, the Administrator shall issue a written decision approving a Site Plan, disapproving it, or approving it with conditions by applying the standards of Section 8607 and shall approve a Site Plan if it meets those standards. The Site Plan, as approved, shall become part of the record of approval of the Land Use Permit and subsequent actions relating to the activity authorized by the Land Use Permit shall be consistent with the approved Site Plan, unless a change conforming to this Ordinance is agreed to in writing by the landowner and the Administrator.

#### **8404. Land Use Permit Approval by Administrator, Standards**

Upon receipt of a land use permit application, the Administrator shall review the application to insure that it is complete, shall coordinate the review with other applicable agencies, as necessary, and shall act on the application within fourteen (14) days, as follows:

- A. If the application is not complete, the Administrator shall return the application with a letter that specifies the additional material required;

- B. If the application is complete, but is found not to be in compliance with this Ordinance, a written Notice of Permit Denial under Section 9607.B shall be given in the manner prescribed by Section 8801.D to the applicant listing the violations of the Ordinance, identifying the changes, if any, that would be necessary to obtain the permit, and/or stating that a variance is required from the Board; or,
- C. If the application is complete and if the Administrator determines that the proposed land use and/or structures either comply with the standards stated in Section 8405 or so comply when necessary conditions are imposed, the Administrator shall issue the permit in writing or issue the permit with the necessary conditions stated in writing in the permit; provided, however, that if a discretionary matter is involved, the Administrator shall refer the application to the Planning Commission.

#### 8405. Compliance Standards

No permit shall be issued under this Article to occupy or use any parcel, for any use or change in use, or for the erection, structural alteration or relocation of a structure unless the land use and/or structure for which the permit is sought complies with:

- A. the requirements, regulations and standards stated in this Ordinance;
- B. the conditions imposed under this Ordinance;
- C. other applicable ordinances and State and Federal statutes; and
- D. any standard set forth in the definition of the proposed use or structure in this Ordinance.

#### 8406. Permit Exemptions

A zoning permit or fee is not required under this Article for the following uses, except as noted:

- A. Only exterior or interior repairs and improvements which do not structurally alter the premises or change the exterior shape or form of any building in any manner and provided that the use of the parcel remains one of those listed as permitted in the respective land use district;
- B. Relocation or replacement of machinery or equipment within a building located in the Commercial Residential District conforming to provision of this Ordinance and used for commercial or industrial purposes, nor for any modifications to such building in connection with said relocation or replacement, unless said modification structurally alters the premises or changes the exterior shape or form in any manner;
- C. The erection, construction, alteration, or maintenance by public utilities or municipal departments or commissions of overhead or underground gas, electrical, water, communication, or sewer systems for local distribution and/or collection via pipes, drains, sewers, wires, cables, traffic signals, hydrants, towers, pools, electrical substations, gas regulation stations, and similar equipment and accessories in connection therewith which are reasonably necessary for

- furnishing adequate service to individual customers/clients, but not including regional, long distance, or interstate distribution or collection systems;
- D. Open space;
  - E. Harvesting of timber as part of a forest management activity under a forest management plan;
  - F. Sidewalks and driveways to dwellings, duplexes, multiple family dwellings provided, however, that a land use permit is required when the addition of a sidewalk and/or a driveway to a parcel would violate the impervious surface percentage limitations of Section 1017.A or Section 7004.B, would violate the Riparian Setback regulations of Section 7005.A.4 or Section 1017.C, or would violate the Riparian Buffer Strip regulations of Section 7005.B.3; and,
  - G. Domestic animal shelters.

#### **8407. Start Work Deadline**

A permit issued under this Article is void if, within a one (1) year period after the permit is issued, the use has not been commenced under circumstances which constitute abandonment. Absent abandonment, a renewal may be granted by the Administrator after a restudy of the permit provided that the required fee is paid and the applicant continues to meet all requirements for a permit.

#### **8408. Void Permit, Application Errors**

Any incorrect information which is material to the issuance of the permit and which is contained in the application for a permit shall render the permit temporarily void until such information is properly corrected upon the permit application. Once the permit application is corrected and if the applicant continues to meet all requirements for a permit, the permit shall be reinstated by correcting it in writing or by reissuing it, as appropriate. Incorrect information is material when the inclusion of the correct information in the original Land Use Permit application would have required the Administrator to deny the application for failure to comply with a requirement or standard for issuance of a permit under this Article.

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## ARTICLE 86: SPECIAL USES

### 8601. Purpose

The formation and enactment of this Ordinance is based upon the division of the Village into districts in which are permitted specified uses that are mutually compatible. In addition to such permitted uses, however, it is recognized there are certain other and additional land and/or building uses which it may be necessary or desirable to allow in certain locations within certain districts because of their particular nature and due to certain circumstances. Therefore, because of their particular or special nature or due to certain circumstances and their actual or potential impact on neighboring uses such as public facilities, these additional uses need to be carefully regulated with respect to their location for the protection of the Village. Such uses, due to their particular needs or nature of the service offered, may have to be established in a district in which they cannot be allowed reasonably as a permitted use.

### 8602. Optional Draft Plan Review

Prior to submitting an application, or Site Plan, for a Special Use Permit, a potential applicant may choose to submit a draft plan for review by the Administrator. The draft plan shall either be superimposed on an air photo of the parcel or be a scaled drawing of the parcel and shall show the location of existing structures, proposed structures, parcel boundaries, natural features, all improvements, streets, sidewalks, easements and drainage systems. The review shall be informal and advisory only and shall not constitute any form of approval, authorization, or granting of any permit. The review shall be done without cost to the potential applicant but must be scheduled in advance with the Administrator.

### 8603. Special Use Permits, Authority to Grant, Reviews, Recommendations, Time Periods

The Village Council shall conduct the final review of each Application for a Special Use Permit after all of the below listed actions are completed at its direction and shall have the authority to approve, disapprove, or approve with conditions an Application for a Special Use Permit. The Village Council shall issue its decision concerning a Special Use Permit within sixty five (65) days after the Administrator's determination that a Special Use Permit Application is complete or either within fifteen (15) days of an extension of time under Section 8603.B or within such other time period as is agreed to, in writing, by the applicant and the Village President.

- A. The Administrator shall review an Application for a Special Use Permit to ensure that the application has been completed properly and that it includes all the elements, documents and information specified in Sections 8605 and 8606 of this Ordinance. Within ten (10) days of the Application filing date, the Administrator shall determine whether the Application is complete or incomplete and shall do one of the following:
  1. Application Incomplete — If the Application is found not to be complete, the Administrator shall return the Application with a letter notifying the

applicant that the Application is not complete and specifying the additional information and/or documents which are required.

2. Application Complete — If the Application is found to be complete, the Administrator shall notify immediately the applicant and the Planning Commission that the Application is complete. The Administrator shall transfer the Application and all documents to the Planning Commission and shall, after consultation with the Planning Commission, set a date for a Public Hearing.
- B. The Planning Commission shall direct the applicant to provide any additional information it deems appropriate to its review, shall conduct the initial review of the Special Use Permit Application, and after its review, shall hold a Public Hearing as specified in Section 8609 concerning the Special Use Permit Application and shall make a written recommendation that the application be approved, disapproved, or approved with conditions. The written recommendation shall set forth the Planning Commission's findings and conclusions based upon all the record information provided with the application and at the Public Hearing. The Planning Commission shall complete its initial review and shall submit its written recommendations and a summary of the information received at the Public Hearing to the Village Council within fifty (50) days after the Administrator's determination that a Special Use Permit Application is complete or within an extension of such time period as is agreed to, in writing, by the applicant and the Planning Commission.

#### 8604. Application Procedure, Form, Fees, Escrow Account for Costs

- A. If a use is listed in a respective land use district as a prospective Special Use, anyone having an enforceable legal interest in a parcel may apply for a Special Use Permit under this Article. Special Use Permit Applications shall be made on a form prepared by the Administrator at the direction of the Planning Commission. The applicant shall complete the Application and file it with the Administrator along with additional required data, exhibits, Site Plan and information as set forth in Sections 8605 and 8606.
- B. The fee shall be as established from time to time by the Village Council, and the fee payment shall accompany the application.
- C. An escrow account shall be established and funded by the applicant in order that the costs incurred by the Village in reviewing and rendering a decision on a Special Use Permit Application shall be borne by the applicant rather than by the taxpayers of the Village. Upon the determination by the Administrator that the Application is complete, the applicant shall make an initial deposit of One Thousand Dollars (\$1000) into an escrow account maintained by the Village and shall, upon notification by the Administrator, make additional deposits to maintain the balance in the escrow account at One Thousand (\$1000) or at an additional amount as determined by the Administrator. The escrow account shall be used to pay for and cover all expenses incurred by the Village in conducting a

review and rendering a decision on a request for a Special Use Permit including, but not limited to, the cost of:

1. Special meetings of the Planning Commission, special committee meetings and other Village special meetings;
  2. Review and other services by the Village legal counsel;
  3. Review and other services by engineers and experts hired by the Village;
  4. Traffic studies;
  5. Environmental or economic impact studies or other similar studies;
  6. Similar services and expenses; and,
  7. Publication and notice expenses.
- D. Following the final approval, denial or withdrawal of an application and after the total of all costs and expenses to the Village are determined and deducted from the escrow account, the Village shall refund, without interest, any surplus amounts that have been deposited by the applicant.

#### 8605. Supporting Materials Required For Special Use Permit Application, Review and Approval

The Application for a Special Use Permit as filed shall include the following information and documents:

- A. The applicant's full name and mailing address and the full name and mailing address of all owners of the land involved in the Application;
- B. A signed and notarized affidavit declaring that the applicant is the sole owner of the land involved in the Application or that the applicant is acting with the consent of each person who is an owner of all or part of the land or who has an ownership interest in the land;
- C. The address, parcel number, and legal description of the property involved in the Application;
- D. The owner's name, address and the parcel number for each parcel located within 300 feet of any side of the property involved;
- E. A copy of a registered survey of the parcel, prepared by a land surveyor registered in Michigan;
- F. A concise statement of all operations and uses which will be conducted on the parcel and/or associated with the structures;
- G. A concise statement of the services, if any, to be offered to the public;
- H. Copies of permits from the Manistee County Soil Erosion and Sedimentation Control and from District 10 Health Department and copies of permits or letters showing approval, tentative approval, or letters of understanding for concurrent approval with the Village Council, by the Michigan Department of Environmental Quality and other applicable agencies where approval is required;
- I. For a parcel or portion thereof located in the Portage Lake Overlay Zone which is adjacent to Portage Lake and/or has a stream running adjacent to or through it, a statement signed by the landowner that the Riparian Buffer Strips required by Section 7005.B either have been established and will be maintained or have not

been established but will, as a condition of issuance of the permit, be established by a date certain and that native vegetation in the Riparian Buffer Strip will thereafter be maintained, and as necessary, be replaced;

- J. A copy of a wetlands permit, if applicable, as required by law;
- K. An environmental assessment and/or environmental impact statement, if required by a State agency or Federal agency, prepared under the requirements and guidelines of and for another State agency or Federal agency, for the project in order to avoid preparation of two environmental assessments or statements;
- L. A professionally prepared Site Plan which shall contain the information required by Section 8606;
- M. An estimate of the cost of construction and completion of the proposed project;
- N. A detailed statement of the facts the applicant relies upon to demonstrate that the Special Use requested meets each of the standards for granting a special use permit set forth in Sections 8610.B.1 through 4 and Section 8611;
- O. A statement or other proof of evidence by applicant of present or future compliance with standards contained elsewhere in this Ordinance;
- P. A statement explaining why the applicant has not provided the information requested by any of the preceding subsections and/or why the applicant considers such subsection to be inapplicable to the requested Special Use; and,
- Q. Any additional information which the Planning Commission may require during its initial review or which the Village Council may require during its review to facilitate a decision.

#### 8606. Site Plan, Scale, Required Information

Any Site Plan required to be submitted by this Ordinance shall be prepared and signed by a land surveyor, engineer, or architect licensed in Michigan, shall be of a scale not less than one (1) inch equals one hundred feet, shall be of such accuracy that the reader can readily interpret the Site Plan, shall consist of more than one drawing where required for clarity, and shall include the following information:

- A. The property identified by parcel lines and location including dimensions, angles and size, correlated with the legal description of said property and by the name and address of the property owner(s), developer(s), and designer(s), with their interest in said property;
- B. The scale, north point, boundary dimension, topography (at least two (2) feet contour intervals), and natural features such as woodlots, water bodies, wetlands, flood plain, high risk erosion areas, slopes over 25%, beach, sand dunes, drainages and similar features, with a statement as to which of these natural features are to be altered or removed;
- C. If the site is on a parcel which is adjacent to Portage Lake or which has a stream or creek running adjacent to or through it, an elevation survey of the parcel prepared by a licensed land surveyor or engineer showing the Riparian Setback lines and, if applicable, the Ordinary High-Water Mark lines;

- D. Existing man-made features such as buildings, structures, high tension towers, pipelines, existing utilities such as wells and water lines and sewer lines or private sanitary sewage facilities, excavations, bridges, culverts, drains and easements on the subject parcel and existing uses on adjacent parcels;
- E. The location, proposed finished floor and grade line elevations, size of proposed main and accessory buildings, their types, uses, and relation one to another and to any existing structures on the site, the height of all buildings and square footage of floor area for each level;
- F. For a residential development, a density schedule showing the number of dwelling units per acre and a dwelling schedule showing the unit type and number of each such unit;
- G. Location of proposed streets, driveways, sidewalks and other vehicular and pedestrian circulation features within and adjacent to the site; location, size and number of parking spaces in off-street parking areas and of service lanes and service parking; and, a calculation of the percent of the land area of the parcel covered by impervious surfaces;
- H. Proposed location, use and size of open spaces; location of any landscaping, fences or walls on the site; location and extent of proposed alterations to the topography and other natural features; and, proposed locations of connections to existing utilities and proposed extensions thereof;
- I. Topography information based on USGS datum or selected on-site elevations;
- J. Generalized soil analysis data, which may include data prepared by the Manistee County Soil Conservation District or Manistee County Planning Department regarding the soils and their adaptability to the proposed use;
- K. Identification of proposed soil erosion and sediment control measures, including preventative soil erosion devices, both during and after any site work related to the development, when required;
- L. A complete description of the proposed development including areas of the site, the number of parcels or units, the number and characteristics of the population impact such as density, elderly persons, school children, tourists, family size, income and related material as applicable;
- M. Expected demands on community services, and how these services are to be provided, to specifically include: school classroom needs, volume of sewage for treatment in the Village Sanitary Sewer system, volume of water consumption related to groundwater reserves, change in traffic volume on adjacent streets and other factors that may apply to the particular development;
- N. Statements relative to the impact of the proposed development on soil erosion, shoreline protection, wildlife habitat, air pollution, water pollution (ground and surface), storm water runoff, noise and the scale of development in terms of the surrounding environment and the elimination of any increases in such impacts over pre-development levels;
- O. A vicinity map showing the location of the site in relation to the surrounding street system within three hundred (300) feet of the boundaries of the site;

- P. Show any changes or modifications required for any applicable regulatory agencies' approvals;
- Q. Existing zoning of the site and all surrounding properties within three hundred (300) feet of the boundaries of the site;
- R. A statement identifying all required Federal, State and local permits; and,
- S. Any additional information which the Planning Commission and/or the Village Council may require during its review to facilitate its decision.

#### **8607. Site Plan, Standards for Approval by Planning Commission**

A Site Plan required to be submitted with the Special Land Use Application shall be reviewed and decided upon by the Planning Commission provided, however, that a Site Plan, if approved, shall be subject to any amendments required by the Village Council. The Planning Commission shall place the review of the Site Plan on the agenda for its next meeting, or special meeting, as appropriate, and at that meeting, the Planning Commission shall conduct a detailed review of the Site Plan to insure that it is complete and includes all the elements, documents and information specified in Section 8606 of the Ordinance. Upon being approved, the Site Plan shall become part of the record of approval and subsequent actions relating to the activity authorized shall be consistent with approved Site Plan, unless a change conforming to this Ordinance is agreed to in writing by the landowner and the Planning Commission. Within the time period set forth in Section 8603.B, the Planning Commission shall issue a written decision approving a Site Plan, disapproving it, or approving it with conditions by applying the following standards:

- A. The site is developed in such a way that it will not impede the normal and orderly development or improvement of the surrounding property for uses permitted in this Ordinance.
- B. The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, and by topographic modifications which result in smooth natural appearing slopes as opposed to abrupt changes in grade between the project and adjacent areas.
- C. The Site Plan shall include proper drainage so that storm water runoff will not be increased and will not adversely affect neighboring properties or any water body.
- D. The Site Plan shall provide reasonable visual and sound privacy for all dwelling units located therein.
- E. Buildings shall be arranged to permit emergency vehicle access by some practical means to all sides.
- F. Every structure or dwelling unit shall have access to a public street, walkway or other right-of-way dedicated to common use.
- G. Vehicular and pedestrian circulation shall respect the pattern of existing and planned streets and pedestrian ways and shall be designed to be safe and convenient.
- H. The planning of the site shall accomplish a desirable transition between the building(s) with the streetscape to provide for adequate planting, safe pedestrian movement, and parking areas.

- I. Parking areas shall be treated with decorative elements, building elements, building wall extensions, plantings, or other innovative means so as to screen parking areas from view from public ways and residential properties.
- J. The height and scale of each building shall be compatible with its site and existing or anticipated adjoining buildings.
- K. Newly installed utility services and service revisions necessitated by exterior revisions shall be buried.
- L. Architectural style, building mass and placement shall conform to scale and proportions of buildings surrounding the subject property.
- M. The Site Plan complies with conditions imposed under this Ordinance.
- N. The Site Plan complies with conditions imposed by the Master Plan.
- O. The Site Plan complies with conditions imposed by other ordinances.
- P. The Site Plan complies with conditions imposed by State and Federal statutes.

#### **8608. Notice of Public Hearing**

Upon the Public Hearing date being set under Section 8603.A.2, the Planning Commission Chairperson shall direct the Administrator to give the Notice of Public Hearing in accordance with the standards set forth in Section 8801 and to include in each Notice the statement that any owner of assessed property or any occupant of any structure located within 300 feet of the property involved in the Notice has the right to request that the Planning Commission hold the public hearing on the application and/or to participate in the scheduled Public Hearing even though their assessed property or structure is not located within the zoning jurisdiction of the Village.

#### **8609. Planning Commission Public Hearing, Recommendations Decision**

After the Notice of Hearing shall have been published and given as required by Section 8608, the Planning Commission shall conduct a Public Hearing:

- A. Representation at Hearing — At a Public Hearing, the applicant or a person required to be given notice under Section 8608 may appear personally or by an agent or attorney.
- B. Recommendations Decision — At the Public Hearing on a request for a Special Use Permit and upon a concurring vote by a majority of its members, the Planning Commission shall issue a written decision based upon all the record evidence recommending that the request for a Special Use Permit be denied, approved, or approved with conditions. The written decision shall be incorporated in a statement of findings and conclusions relative to the Special use, shall specify the basis for the decision, and shall specify the basis for any conditions recommended to be imposed. The Planning Commission shall recommend that the request for the Special Use Permit be approved or approved with conditions if the Planning Commission finds that the request is in compliance with the conditions imposed under this Ordinance, other applicable ordinances, and State and Federal law and that the requested special use meets

the standards set forth in Section 8611 and that any conditions recommended to be imposed meet the standards in Section 8612.

- C. The Planning Commission shall, within the time period set forth in Section 8603.B, send its Recommendations Decision and all the record evidence, including the summary of the comments received at the Public Hearing, to the Village Council.

#### 8610. Village Council Special Meeting, Final Review, Decision and Notice, Issuance of Special Use Permit

- A. Upon the receipt by the Village Council of the Recommendations Decision of the Planning Commission and the record evidence, a Special Meeting shall be scheduled for the Village Council to conduct the final review of the request for the Special Use Permit and to issue a final decision denying, approving or approving with conditions the Special Use Permit. The Village Council may require that the applicant provide any additional information that the Village Council deems necessary to facilitate its decision.
- B. The Village Council shall review and consider all of the record evidence, the Recommendations Decision of the Planning Commission, and the public comments made at the Public Hearing in order to determine whether the request for issuance of the Special Use Permit complies with the below listed requirements and standards. Upon a concurring vote by a majority of its members, the Village Council shall issue a written decision directing that the request for the Special Use Permit be denied, be approved or be approved with conditions and, if required, that the Site Plan be amended. The written decision shall be incorporated in a statement of findings and conclusions relative to the special use which specifies the basis for the decision and, if conditions are imposed, shall specify the basis for its conclusion that those conditions comply with the standards set forth in Section 8612. The Village Council shall approve the request for the Special Use Permit if the request is in compliance with:
  - 1. the conditions imposed under this Ordinance;
  - 2. other applicable ordinances;
  - 3. State and Federal law; and,
  - 4. the standards stated in Section 8611.
- C. A copy of the Village Council's decision shall be given in the manner prescribed by Section 8801.D.to the applicant.
- D. Issuance of Special Use Permit — Upon issuing a Decision either to approve the Special Use Permit or to approve it with conditions, the Village Council shall direct the Administrator to issue the Special Use Permit in accordance with the terms of that Decision.

### 8611. Required Standards for Special Use Permits

The standards for determining whether a Special Use Permit shall be granted are that the requested Special Use:

- A. Will be consistent with and promotes the intent and purposes of the Ordinance, both generally and for the particular district;
- B. Will be compatible with adjacent uses of land and with the natural environment;
- C. Will be constructed, operated, maintained and managed so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity;
- D. Will be compatible with the capacities of public services and facilities affected by the Special Use such that there will not be excessive additional requirements for services or facilities at public cost;
- E. Will be consistent with the general public health, safety and welfare;
- F. Will be consistent with the plan for physical development of the Village in the Master Plan adopted by the Village Council; and,
- G. Will be, as designed and constructed, in compliance with all applicable general regulations and specific district and overlay regulations and standards listed elsewhere in this Ordinance.

### 8612. Required Standards for Special Use Permit Conditions

All conditions placed upon the issuance of a Special Use Permit shall be specified in detail in the Decision and in the Permit. Conditions imposed shall meet all of the following requirements:

- A. Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, of the residents and landowners immediately adjacent to the proposed land use or activity, and of the Village as a whole;
- B. Be related to the valid exercise of the police power and purposes which are affected by the proposed Special Use or activity; and,
- C. Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in this Ordinance for the Special Use or activity under consideration, and be necessary to insure compliance with those standards.

### 8613. Performance Guarantee Requirement

To ensure compliance with this Ordinance and any conditions imposed by the Village Council as necessary to protect natural resources or the health, safety and welfare of the residents of the Village and future users or inhabitants of the proposed project or project area, including roadways, lighting, utilities, sidewalks, screening and drainage, the Village Council may require that the applicant provide a cash deposit, certified check, irrevocable letter of credit, or surety bond acceptable to the Village Council covering the estimated costs of improvements to insure faithful completion of those improvements as authorized by law. Such security shall be deposited with the Village Clerk at the time of issuance of the permit to insure faithful

completion of the improvements. Any cash deposited shall be returned to the applicant in reasonable proportion to the ratio of work completed on the required improvements as work progresses.

#### **8614. Recording of Special Use Permit and Conditions Imposed**

- A. Conditions imposed with respect to the approval of a Special Use or activity shall be recorded in the record of the approval action and shall remain unchanged, except through the amendment process or upon the mutual consent of the Village Council and the landowner as provided for in Section 8615. A record of such conditions imposed and any such changes shall be maintained by the Village Clerk.
- B. The Site Plan and all conditions imposed by the Village Council shall be incorporated as part of the Special Use Permit which shall be filed with, and maintained by, the Village Clerk.
- C. Within thirty days of the Village Council's decision, the applicant shall file a notice of the issuance of the Special Use Permit in a recordable form with a property description for recording in the miscellaneous records of the Office of the Register of Deeds of Manistee County and shall provide a copy of the filing to the Village Clerk.

#### **8615. Amendment of the Special Use Permit**

The holder of a Special Use Permit may submit an application to amend the existing Special Use Permit, which application shall be processed in the same manner and under the same requirements and standards that apply to an initial Special Use Permit Application under this Article. Corrections and minor changes that do not constitute a material alteration of an existing Special Use Permit may be made by mutual agreement between the Village Council and the Special Use Permit Holder prior to the issuance by the State agency of a permanent occupancy permit. A material alteration is a change which would arguably violate a requirement or standard for issuance of a permit under Section 8611 and/or arguably would require the imposition of conditions under Section 8612.

#### **8616. Transfer of Special Use Permit**

In order to insure continued compliance with the terms of this Ordinance and a Special Use Permit issued under it in cases where a performance guarantee has been required under Section 8613, a Special Use Permit shall specify reasonable terms for transfer of a valid Special Use Permit security from the present landowner or operator to a subsequent landowner or operator. The responsibility for said transfer in accordance with the terms of the Special Use Permit shall be that of the Permit Holder of Record. Failure of a Permit Holder of Record to transfer properly a Special Use Permit security shall not release the Permit Holder of Record from Ordinance penalties for any subsequent action undertaken on the subject parcel in violation of the terms of the Special Land Use Permit. Proper completion of the transfer shall require documentation of assumption by the new owner of an interest in the subject parcel and a written agreement that the new owner/operator will assume the obligations for which the

security was given. When such security is deposited properly with the Village by the new permit holder, any security on deposit with the Village by the previous permit holder shall be returned to the previous permit holder in accordance with the terms of the Ordinance.

#### **8617. Expiration of Special Use Permit**

A Special Use Permit shall be valid for as long as the approved Special Use continues in accordance with the terms stated in the approved permit. A Special Use Permit shall expire or be discontinued by one or more of the below listed conditions.

- A. When a Special Use replaces or supercedes the original Special Use on a property, provided, however, the Village Council may approve two or more Special Uses as appropriate to occupy a site simultaneously.
- B. When the original Special Use is replaced by a Permitted Use and the land use application and the Site Plan or Plot Plan filed by the applicant do not include a Special Use.
- C. When the applicant requests the rescinding or removal of the Special Use.
- D. When, after 48 months from the date of a signed permit, and based on evidence of vacating and/or moving to another location which constitutes abandonment, the Village Council declares a Special Use to be null and void for reason stated of abandonment following notice and hearing as provided in Section 8618.

#### **8618. Violation of Special Use Permit**

Any violation of any material term or condition of a Special Use Permit shall be cause for revocation or suspension of the Permit. The Village Council may either revoke or suspend, pending correction of the violation, any Special Use Permit. The act either to revoke or to suspend the Permit shall not occur until after notice of a Public Hearing conforming to the standards set forth in Section 8801 and Section 8608 is given and after the Hearing is held on the date listed in the notice. Any interested party may appear in person or by attorney at the Hearing. Before revoking or suspending the permit, the Village Council shall:

- A. make a finding based on all the record evidence that a violation of a term or condition of the Special Use Permit exists and that the term or condition is material in that the inclusion of that specific term or condition was necessary for the initial issuance of the permit to be lawful; and,
- B. shall give the Permit Holder a reasonable opportunity to correct the violation.

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## ARTICLE 88: NOTICE STANDARDS FOR A PUBLIC HEARING

8801. The standards for a Notice of Hearing for a Public Hearing are, as follows:

- A. Each Notice of Hearing is to be published and given not less than fifteen (15) days before the date of the Hearing and shall do all of the following:
  - 1. describe the nature of the request which will be presented at the Hearing;
  - 2. indicate the property that is the subject of that request including, where applicable, all existing street addresses that are within the property or other identification if there are no street addresses;
  - 3. state when and where that request will be considered; and,
  - 4. state when and where written comments will be received concerning that request.
- B. Notice of Hearing is to be published in a newspaper of general circulation and placed on the website utilized by the Village.
- C. Notice of Hearing is to be given:
  - 1. to the person who initiated the request and/or to the owners of the property that is the subject of the request which will be presented at the Hearing;
  - 2. to all persons to whom real property is assessed within 300 feet of the subject property regardless of whether the assessed property is within the Village; and,
  - 3. to the occupants of a structure on the subject property and to the occupants of all structures within 300 feet of the subject property regardless of whether the structure is within the Village, provided, however, that notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different persons, one (1) occupant of each unit or spatial area shall be given notice, and provided further, that if a single structure contains more than four (4) dwelling units or other distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure.
- D. The Notice of Hearing under this Article shall be considered to have been given when personally delivered or when deposited during normal business hours with the United States postal service or other public or private delivery service for delivery to the person's address and, where applicable, to the person's post office box number, as listed in the Village tax rolls. If the name of the occupant is not known, the term "occupant" may be used for the intended recipient of the notice.

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## ARTICLE 96: ZONING BOARD OF APPEALS

### 9601. Legal Basis for the Zoning Board Of Appeals

There is hereby established a Zoning Board of Appeals (“Board”), which shall perform its duties and exercise its powers as provided in the Act in such a way that the purposes of this Ordinance as set forth in Section 102 shall be enforced, public safety secured, and substantial justice done.

### 9602. Appointment of Members, Terms, Quorum Requirement, Conflict of Interest, Removal, Vacancy

- A. The Board shall consist of three (3) Regular Members.
- B. The Village Council, by majority vote of its members, shall select and appoint the three (3) Regular Members and not more than two (2) Alternate Members from among the electors of the Village. The appointments made shall be representative of the population distribution and of the various interests present in the Village.
- C. No elected official, contractor or employee of the Village shall serve as a Regular or Alternate Member of the Board, except that one Regular Member or one Alternate Member shall be a member of the Village Council subject to the following restrictions:
  - 1. Such a Regular or Alternate Member shall not serve as the Board Chairperson; and,
  - 2. Such a Regular Member or Alternate Member shall not participate in a Public Hearing on, or vote on, the same matter that he or she voted on previously as a member of the Village Council. The Member may consider and vote on unrelated matters involving the same property.
- D. The term of office for an appointed Board Member shall be three (3) years, except for a Member serving because of membership on the Village Council whose term shall be limited to the time he or she is a Village Council member. The terms of office shall be staggered. A successor shall be appointed, in the same manner as set forth in Section 9602.B not more than one (1) month after the term of the preceding Member has expired or after a vacancy occurs, to serve the remainder of the unexpired term in the same manner as the original appointment.
- E. An Alternate Member called to serve on the Board has the same voting rights as a Regular Member and shall serve in a case until a final decision is made. An Alternate Member may be called to serve as a Board Member in the absence of a Regular Member if the Regular Member will be unable to attend one (1) or more meetings and may also be called to serve as a Board Member for the purpose of reaching a decision on a case in which a Regular Member has abstained for reasons of conflict of interest.

- F. The Board shall not conduct business unless there are present a majority of the Regular Members and any Alternate Members called to serve as a Regular Member.
- G. A Member shall disqualify himself or herself from a vote in which the Member has a conflict of interest, and the failure to do so shall constitute malfeasance in office.
- H. A Member of the Board may be removed by the Village Council for misfeasance, malfeasance or nonfeasance in office upon written charges and after a Public Hearing. The generally recognized definition of these terms is:
  - 1. nonfeasance — omission to perform a required duty at all or a total neglect of duty;
  - 2. misfeasance — the improper performance of an act which may lawfully be done; and,
  - 3. malfeasance — the commission of some act which is positively unlawful.

**9603. Board Duties and Authority, Written Decision by Majority Vote, Records, Procedural Rules**

- A. The Board shall hear and decide questions that arise in the administration of this Ordinance, including interpretation of the Ordinance text and Zoning Map. The Board shall also hear and decide matters referred to it or upon which it is required to pass under this Ordinance or the Act. It shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by the Administrator. The Board shall state in writing the grounds of any determination made by it and shall maintain a record of its proceedings which shall be filed in the Office of the Village Clerk.
- B. The Board is vested with the authority listed below.
  - 1. Meetings of the Board shall be held at the call of the Chairperson and at other times as the Board in its Rules of Procedure may specify.
  - 2. The Chairperson or, if absent, the acting Chairperson may administer oaths and compel the attendance of witnesses.
  - 3. If there are practical difficulties in carrying out the strict letter of this Ordinance, the Board may grant a non-use variance under Section 9604.C relating to the construction, structural changes or alterations of structures related to dimensional requirements or to other non-use standards or regulations in this Ordinance.
  - 4. The Board may adopt Rules to govern its procedures when sitting as the Board and shall prescribe in its Rules the time period for filing an appeal with the Board and with the Administrator.
- C. The concurring vote of a majority of the Regular Members and Alternate Members called to serve as a Board Member is necessary to reverse an order, requirement, decision, or determination of the Administrator, to decide in favor of the applicant on a matter upon which the Board is required to pass under the

Ordinance, to issue an interpretation of the Ordinance Text or Zoning Map, or to grant a non-use variance under this Ordinance.

#### 9604. Prohibition Against Use Variances, Requirements and Standards for Non-Use Variances

- A. Under no circumstances shall the Board grant a variance to allow a use not permitted under the terms of this Ordinance in the Zoning District involved.
- B. A non-use variance from the terms of this Ordinance shall not be granted by the Board unless a person, who has been given an Administrator's Notice that a land use permit has been denied and/or that a variance is required, submits within 45 days of being given such Notice a written request for a variance to the Board specifying the grounds that the applicant relies upon to demonstrate:
  - 1. That special conditions and circumstances exist which are peculiar to the parcel or structure involved and which are not applicable to other parcels or structures in the same district;
  - 2. That literal interpretation of the provisions of this Ordinance would deprive the requesting person of rights commonly enjoyed by other parcels in the same district under the terms of this Ordinance; and,
  - 3. That the special conditions and circumstances do not result from the actions of the requesting person.
- C. A non-use variance from the terms of this Ordinance regarding a structure or parcel shall not be granted unless, after considering all the record evidence submitted at a Public Hearing held under this Article, a majority of the Regular Members and Alternate Members called to serve as a Board Member votes to concur with written findings that the following standards have been met:
  - 1. Special conditions and circumstances exist which are peculiar to the parcel or structure involved and which are not applicable generally to other parcels or structures in the same Zoning District.
  - 2. The special conditions and circumstances required to be demonstrated in Section 9604.C.1 do not result from the actions of the requesting person.
  - 3. A literal interpretation of the provisions of this Ordinance would deprive the requesting person of rights commonly enjoyed by owners of other properties in the same Zoning District under this Ordinance.
  - 4. The non-use variance, as granted, is in harmony with the general purpose and intent of this Ordinance, is not injurious to the neighborhood or otherwise detrimental to the public safety, and is the minimum variance that will provide substantial justice to the applicant by allowing reasonable use of the structure or parcel.
  - 5. The grant of the non-use variance is appropriate because there are practical difficulties in carrying out the strict letter of this Ordinance, the spirit of this Ordinance is observed, public safety is secured and substantial justice is done.

- D. No nonconforming structures or nonconforming parcels in the same zoning district and no permitted structures or permitted uses in other districts shall be considered grounds for the issuance of a variance.
- E. In granting any non-use variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Ordinance, including requirements for buffering between parcels by landscaping, fencing, vegetation, or other similar methods. Violations of such conditions and safeguards that are made a part of the terms of the written decision under which a non-use variance is granted shall be deemed a violation of this Ordinance and punishable under Section 9805.

#### 9605. One Year Restriction on Applying for a Variance Previously Denied

No variance which has been denied wholly or in part by the Board shall be resubmitted for a period of one (1) year from such denial, except on grounds of new evidence or proof of changed conditions found by the Board to be valid.

#### 9606. Interpretation of Ordinance Text

Ambiguities in the text of this Ordinance shall be resolved in favor of the legislative intent of the Village Council by reference to the purposes of this Ordinance and the land use and development component of the Master Plan adopted by the Village Council.

#### 9607. Appeals, Interpretation Requests, Non-Use Variance Requests, Time Limits, Appeal in Writing, Fees, Stays, Hearing, Decision

- A. An appeal to the Board may be taken by a person aggrieved or by an officer, department, board or bureau either of the State of Michigan or of the Village. A written request for interpretation of the Ordinance may be submitted only by the Administrator or by a person aggrieved who includes a written request for interpretation of the Ordinance in that person's appeal and/or request for a non-use variance.
- B. A Notice of a Permit Denial given to a person by the Administrator in the manner prescribed by Section 8801.D shall commence the time limit for filing an appeal and/or a request for non-use variance. An appeal form should be included with the Notice of Permit Denial.
- C. The time limit within which a notice of appeal and/or a request for variance must be filed is forty five (45) days from the date on which Notice of Permit Denial is considered to have been given to the person filing the appeal as set forth in Section 9607.B.
- D. Appeal from a ruling of the Zoning Administrator concerning the enforcement, administration, or interpretation of this Ordinance, its text or map shall be made by filing with the Board and with the Administrator a written notice of appeal specifying the grounds for the appeal. The notice of appeal should be on a form prepared by the Administrator for that purpose, should also include a plot plan or a site plan, and shall, when a non-use variance request is filed, specify the

grounds that applicant relies upon to demonstrate that the requested non-use variance meets the standards for granting a non-use variance set forth in Section 9604.C.1, Section 9604.C.2, and Section 9604.C.3.

- E. A fee prescribed by the Village Council shall be paid to the Administrator at the time of filing the notice of appeal or the request for a non-use variance. If the Village Council finds an applicant to be indigent, it may waive the fee.
- F. Upon the filing of an appeal or the request for a non-use variance and after the fee is paid or waived, the Administrator shall forthwith transmit to the Board all of the papers constituting the record of the Administrator's decision and thereafter shall prepare and submit to the Board a Zoning Administrator Staff Report.
- G. An appeal to the Board stays all proceedings in furtherance of the action appealed, subject to the following provisions:
  - 1. An appeal does not stay all proceedings in furtherance of the action appealed if the Administrator certifies to the Board after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would in the opinion of the Administrator cause imminent peril to life or property; and,
  - 2. After the certificate set forth in Section 9607.G.1 above is given to the Board, proceedings in furtherance of the action appealed may be stayed only by a restraining order issued by the Board or by the Circuit Court.
- H. When a notice of appeal has been filed or a written application for a non-use variance has been submitted and the fee requirement has been complied with or when the Administrator has made a written request for interpretation, the Administrator shall, at the direction of the Board Chairperson, immediately place the matter upon the calendar for a Public Hearing and shall give the Notice of Public Hearing in accordance with the standards of Section 8801, provided, however, if a request for interpretation does not involve a specific parcel of property, the Notice of Hearing in the form set forth in Section 8801.A shall be published as set forth in Section 8801.B but need be given under Section 8801.C only to the Administrator
- I. After the Administrator shall have published and given the Notice of Hearing required by Section 9607.H above, the Board shall conduct a Public Hearing.
- J. At the Public Hearing, a party may appear personally or by agent or attorney.
- K. At the Public Hearing, the Board may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination before it. The Board may issue or direct the issuance of a permit upon such conditions it finds to be appropriate under the provisions of this Ordinance, and to that end, shall have all the powers of the Administrator. The Board shall decide by concurring vote of a majority of its Regular Members and Alternate Members called to serve as a Board Member upon all matters appealed to it, submitted to it, or requested from it under this Ordinance, and its decision shall be in the form of a written resolution containing a full record of the findings and determinations made by the Board based upon all of the record evidence.

#### 9608. Decision Final Upon Signing, Appeal to Circuit Court

The decision of the Board shall be final when, at the Public Hearing as convened or as recessed and reconvened in accordance with law, the Board decision is issued in writing and signed by the Board Chairperson or, if there is no Chairperson, by the Regular Members and Alternate Members called to serve as a Board Member. Any party aggrieved by such Board decision may appeal to the Circuit Court as provided for in the Act or otherwise permitted by law.

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## ARTICLE 98: AMENDMENTS, VALIDITY OF PENALTIES

### 9801. Amendment Authority, Initiating Amendments, Fees

The Village Council may from time to time, following receipt of a recommendation from the Planning Commission amend, modify, supplement, or revise the district boundaries or the provisions and regulations herein established whenever the public necessity and convenience and the general welfare require such an amendment. Said amendment may be initiated by resolution of the Planning Commission, the Administrator, the Board, or the Village Council, or by petition of one or more owners of property to be affected by their proposed amendment. The petitioner or petitioners requesting an amendment shall file an application form with the Administrator and shall at the time of application pay a filing fee in an amount as set from time to time by the Village Council; payment of the fee shall not apply to the Planning Commission, the Administrator, the Board or the Village Council.

### 9802. Amendment Procedure

The procedure for making amendments to the Ordinance shall be in the manner provided by the Act, with all amendment proposals being referred to the Planning Commission for statutorily required notices, Public Hearing, recommendations approving or disapproving the amendment proposals, and transmission of the recommendations and a summary of comments made at the Public Hearing within fifteen (15) days thereof to the Village Clerk for action by the Village Council, with or without an additional public hearing.

### 9803. Approval of Amendments, Vote by Village Council, Notice of Adoption

- A. Upon receipt by the Village Clerk of the summary of public comments and the recommendations decision from the Planning Commission, the Village Clerk shall place the Ordinance amendments on the Agenda for the next Regular Meeting or for a Special Meeting with notice given as required by law.

[Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

- B. At such regular or special meeting, the Village Council may proceed to approve or disapprove the amendment(s) to the Ordinance by majority vote of its members, provided, however, that if a protest petition under MCL 125.3403 is presented to the Village Council prior to legislative action on the amendment(s), then a two-thirds (2/3) vote of the Village Council shall be required to approve the Ordinance amendments.
- C. Following adoption of amendments to the Ordinance by the Village Council, the amendments shall be filed with the Village Clerk who shall, within fifteen (15) days of adoption, have a notice of adoption of the amendments published in a newspaper of general circulation of in the Village. The Notice shall contain the following information:
1. Either a summary of the regulatory effect of the amendments, including the geographic area affected, or the text of the amendments;
  2. The effective date of the amendments; and,

3. The place where and the time when a copy of the amendments may be purchased or inspected.

#### 9804. Captions

The captions set forth in this Ordinance are for purposes of making the Ordinance more user friendly, and these captions shall not be deemed to be a part of this Ordinance and shall not be construed to enlarge or to restrict the rights and obligations otherwise contained in the Ordinance.

#### 9805. Violations and Penalties, Nuisance Per Se, Abatement

Uses of land and dwellings, buildings, structures, tents and mobile homes or other recreational vehicles used, erected, altered, razed, or converted in violation of any provision of this Ordinance are declared to be a nuisance per se. Any person violating any of the provisions of this Ordinance is responsible for a municipal civil infraction and, upon conviction thereof, shall be subject to a fine of not more than three hundred (\$300) dollars and the costs of prosecution. Each day that such violation is permitted to continue by such offending person shall constitute a separate offense, provided, however, that the total amount of any fine imposed shall not exceed five hundred (\$500) dollars per citation. The imposition of any fine or sentence shall not exempt the offending person from compliance with the requirements of this Ordinance. The Village Council may authorize and direct the Administrator or the Village Attorney to take whatever legal action is necessary to prevent, enjoin, abate, or remove any unlawful alteration, erection, construction, reconstruction, maintenance or use. The rights and remedies provided in this Section are cumulative and in addition to all other remedies provided by law.

#### 9806. Repeal of Ordinances

The Onekama Village Building Code of 1963 and all amendments thereto are hereby repealed as of the effective date of this amended and completely restated Ordinance. All previous zoning ordinances, including the Onekama Village Permanent Zoning Ordinance, as adopted May 3, 1990, and any amendments thereto, are hereby repealed coincident as of the effective date of this amended and completely restated Ordinance.

#### 9807. Pending Applications

All Ordinance related matters before the Administrator, the Planning Commission or the Board on the date this Ordinance was amended, effective as of August 1, 2014, shall be acted upon only in conformance with the provisions of the Ordinance as amended effective August 1, 2014.

#### 9808. Validity and Severability Clause

If any court of competent jurisdiction issues a Decision and/or Order declaring any part of this Ordinance to be invalid, such Decision shall not affect any provisions of this Ordinance other than the Ordinance provisions specifically included in the court's Order. If any court of

competent jurisdiction issues a Decision and Order declaring the application of any provisions of this Ordinance to a particular land, parcel, district, use, building or structure invalid, such Decision shall not affect the application of said provision to any other land, parcel, district, use, building or structure not specifically included in the Order.

**9809. Period of Effectiveness**

This Ordinance shall remain in full force and effect henceforth unless repealed.