

Article IX: Administration and Enforcement of Ordinance

SECTION 9.01 ZONING ADMINISTRATOR

The provisions of this Ordinance shall be administered and enforced by a Township Zoning Administrator, appointed by the Township Board of Trustees for such term and subject to such conditions and at such rate of compensation as said Board shall determine as reasonable.

The Zoning Administrator shall have the power to grant or deny Zoning Permits and to make inspections of buildings or premises necessary to carry out the duties in the enforcement of this Ordinance. It shall be unlawful for the Zoning Administrator to approve any plans or issue any Permits for the excavation or construction until such plans have been inspected in detail and found to conform to this Ordinance.

The Zoning Administrator shall under no circumstances be permitted to make changes to this Ordinance or to vary the terms of this Ordinance in carrying out the duties of Zoning Administrator.

The Zoning Administrator shall not refuse to issue a Permit when conditions imposed by this Ordinance are complied with by the applicant despite violations of contracts, such as covenants or private agreements that may occur upon the granting of said Permit.

SECTION 9.02 ZONING PERMIT

1. No building or structure subject to the provisions of this Ordinance shall hereafter be erected, structurally altered, reconstructed, used, or moved, nor shall any associated excavation or filling of land commence until a Zoning Permit application has been filed with the Township Zoning Administrator and a Zoning Permit has been issued by the Zoning Administrator, except as otherwise permitted for in this Ordinance. No Zoning Permit shall be required for any lawful use of any building or structure in existence as of the adoption date of this Ordinance. No Zoning permit shall be required for an accessory structure without a permanent foundation and which is less than two hundred (200) square feet in size. All structures shall comply with applicable district setback requirements regardless of whether a zoning permit is required.
2. The application shall be signed by the owner of the premises or his agent and shall certify that all provisions of this Ordinance and other applicable laws and requirements are to be complied with. Any application requiring approval from the Planning Commission must be submitted not less than thirty (30) days prior to a scheduled meeting for consideration at that Planning Commission meeting. The application shall be accompanied by:
 - A. A site plan, if required (see Section 5.03), or a plot plan/sketch in duplicate (see Section 5.02), in a scale sufficient to clearly detail as determined by the Zoning Administrator, the location and dimensions of the premises including the boundary lines of all parcels of land under separate ownership contained therein; the size, dimensions, location on the premises, and height of all buildings, structures or other impervious surfaces in existence, to be erected and/or altered; the width and alignment of all abutting streets, highways, alleys, utility locations, easements and public open spaces; the front yard dimensions of the nearest building on both sides

of the proposed building or structure; the location and dimensions of sewage disposal facilities both on adjoining land or lots and those to be erected on the lot under consideration; and the location of all wells on adjoining lands or lots and those to be erected on the lot under consideration.

- B. The Zoning Administrator shall have the authority to require a legal survey (not a mortgage survey) in the cases where there may be encroachment on the setbacks by the proposed structures or when the exact locations of lot lines are not known.
 - C. Copies of permits or waivers of permits by other agencies as may be required by statute and/or by the Zoning Administrator of this Ordinance.
 - D. Such other information as may be required to determine compliance with the Ordinance.
3. A Zoning Permit may not be issued until all other necessary permits required by statute have been obtained or waived with exception of those permits issued by the Charlevoix County Building Department.
 4. The location of the property boundaries and all structures shall be staked on the ground for Zoning Administrator approval prior to the issuance of the Zoning Permit.
 5. Any Zoning Permit under which substantial construction has not started or if no substantial construction has been done in the furtherance of the zoning permit, the zoning permit shall expire after twelve (12) months from date of issuance.
 6. The Zoning Administrator shall have the power to revoke or cancel any Zoning Permit in case of failure or neglect to comply with the provisions of the Ordinance, all other necessary permits have not been obtained or in the case of a false statement or misrepresentation made in the application. The owner shall be notified of such revocation in writing.
 7. No Zoning Permit shall be valid until the required fees have been paid. Except for an accessory building or structure less than two hundred (200) square feet in size (which does not require a zoning permit pursuant to **Section 9.02.1** of this Ordinance), no separate fee shall be required for accessory buildings or structures when part of the application for the principal building or structure. Applications and petitions filed pursuant to the provisions of this Ordinance shall be accompanied by the filing fees as specified by the Township Board of Trustees.

SECTION 9.03 CONDITIONS

The Planning Commission and Zoning Board of Appeals may attach reasonable conditions on discretionary zoning decisions under their jurisdiction. These conditions may include those necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Any conditions imposed, however, shall meet all of the following requirements:

1. Be designed to protect natural resources, the health, safety, welfare, as well as the

social and economic well being of those who will use the land under consideration, residents and landowners immediately adjacent to the proposed land use, and the community as a whole.

2. Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
3. Be necessary to meet the intent and purpose of the Zoning Ordinance, be related to the standards established in the Ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

SECTION 9.04 REHEARING PROCESS

1. Final Decisions: Except as provided in this section, a decision of the Planning Commission or Zoning Board of Appeals shall be final. The Planning Commission or Zoning Board of Appeals may grant a rehearing under exceptional circumstances for any decision made by it. Exceptional circumstances shall mean any of the following:
 - A. The applicant who brought the matter before the Planning Commission or Zoning Board of Appeals made misrepresentations concerning a material issue, which was relied upon by the Planning Commission or Zoning Board of Appeals in reaching its decision.
 - B. There has been a material change in circumstances regarding the Planning Commission or Zoning Board of Appeals' findings of fact, which occurred after the public hearing.
 - C. The Township Attorney, by written opinion, states that in the Attorney's professional opinion the decision made by the Planning Commission or Zoning Board of Appeals or the procedure used in the matter was clearly erroneous.
2. Rehearing Procedure: A rehearing may be requested by the applicant or by the Zoning Administrator, or a rehearing may be granted by the Planning Commission or Zoning Board of Appeals on its own motion.
 - A. A request for a rehearing which is made by an applicant must be made within twenty-one (21) days from the date of approval of the Planning Commission's or Zoning Board of Appeals' minutes regarding the decision for which the rehearing is being requested.
 - B. A request for a rehearing made by the Zoning Administrator or a rehearing granted by the Planning Commission or Zoning Board of Appeals on its own motion may be granted at any time as long as the applicant has not been prejudiced by any delay.
 - C. Whenever the Planning Commission or Zoning Board of Appeals considers granting a rehearing, it shall provide written notice to the applicant that a rehearing will be considered. The notice may be served upon the applicant by first class mail at the applicants' last known address, or may be served personally on the applicant. The notice must be served at least nine (9) days before the time set for the hearing if served by mail, or at least seven (7) days before the time set for the hearing if served by personal service. Service by mail shall be complete

upon mailing. In addition to serving the above notice on the applicant, all other notice requirements for the type of decision being heard shall be completed before the Planning Commission or Zoning Board of Appeals holds a meeting at which it considers whether to grant a rehearing.

- D. If the Planning Commission or Zoning Board of Appeals grants a rehearing, then the rehearing shall not be held until all applicable notice requirements have been satisfied.

SECTION 9.05 FEES

1. To assist in defraying the costs of investigating, reviewing and administering zoning applications, appeals, rezoning requests from individual property owners, and other types of decisions which result in extra costs to the Township, the Township Board may from time to time adopt by resolution a fee schedule establishing basic zoning fees, such as those fees related to the following:
 - A. Zoning permits.
 - B. Special land use permits.
 - C. Ordinance interpretations by the Zoning Board of Appeals: appeals of administrative interpretation or request for interpretation. Appeals and requests for interpretation initiated by the Township Board, the Planning Commission, or the Zoning Administrator shall not be subject to a zoning fee.
 - D. Classification of unlisted property uses.
 - E. Requests to change a non-conforming use to another non-conforming use.
 - F. Requests for variances from the Zoning Board of Appeals.
 - G. Requests for rezoning of property by individual property owners or amendments to the Zoning Ordinance text. Rezoning of property or text amendments initiated by the Township Board, the Planning Commission, or the Zoning Administrator shall not be subject to a zoning fee.
 - H. Site plan reviews.
 - I. Requests for a planned unit development (PUD).
 - J. Any other discretionary decisions by the Planning Commission or Zoning Board of Appeals.

The amount of these zoning fees shall cover the costs associated with the review of the application or appeal, including but not limited to the costs associated with conducting public hearings, publishing notices in the newspaper, sending required notices to property owners, postage, photocopying, mileage, time spent by zoning staff, and time spent by the members of the Planning Commission and/or Zoning Board of Appeals. The basic zoning fees shall be paid before any application required under this Ordinance is processed. The basic zoning fees are non-refundable, even when an application or appeal is withdrawn by the applicant.

2. If the Planning Commission or Zoning Board of Appeals determines that the basic zoning fees will not cover the actual costs of the application review or appeal, or if the Planning Commission or Zoning Board of Appeals determines that review of the application and/or participation in the review process or appeal by qualified professional planners, engineers, attorneys, or other professionals is necessary or advisable, then the applicant shall deposit with the Township Treasurer such additional zoning fees in an amount determined by the Planning Commission or Zoning Board of Appeals equal to the estimated additional costs. The additional zoning fees shall be held in escrow in the applicant's name and shall be used solely to pay these additional costs. If the amount held in escrow becomes less than ten (10%) percent of the initial escrow deposit or less than ten (10%) percent of the latest additional escrow deposit and review of the application or decision on the appeal is not completed, then the Planning Commission or Zoning Board of Appeals may require the applicant to deposit additional fees into escrow in an amount determined by the Planning Commission or Zoning Board of Appeals to be equal to the estimated costs to complete the review or decide the appeal. Failure of the applicant to make any escrow deposit required under this Ordinance shall be deemed to make the application incomplete or the appeal procedurally defective thereby justifying the denial of the application or the dismissal of the appeal. Any unexpended funds held in escrow shall be returned to the applicant following final action on the application or the final decision on the appeal. Any actual costs incurred by the Township in excess of the amount held in escrow shall be billed to the applicant and shall be paid by the applicant prior to the issuance of any permit or the release of a final decision on an appeal.

SECTION 9.06 PERFORMANCE GUARANTEE

In connection with the construction of improvements through site plan approval, special land use approval, or a PUD project, the Planning Commission may require the applicant to furnish the Township with a performance guarantee in the form of a cash deposit, certified check, irrevocable bank letter of credit, or surety bond acceptable to the Township in an amount equal to the estimated costs associated with the construction of public and site improvements. Public improvements mean by way of example and not limitation roads, parking lots, and water and sewer systems which are located within the development or which the applicant has agreed to construct even though located outside the development. Site improvements mean landscaping, buffering, and the completion of conditions imposed by the Planning Commission which are located within the development. For purposes of this section, the costs covered by the performance guarantee shall include all of the following: (1) the purchase, construction, and/or installation of the improvements, (2) architectural and engineering design and testing fees and related professional costs, and (3) an amount for contingencies consistent with generally accepted engineering and/or planning practice. The performance guarantee shall be deposited with the Township Clerk at or before the time the Township issues the permit authorizing the development, or if the development has been approved in phases, then the performance guarantee shall be deposited with the Township Clerk prior to the commencement of construction of a new phase. The performance guarantee shall ensure completion of the public and site improvements in accordance with the plans approved by the Planning Commission. Any cash deposit or certified funds shall be refunded for the development or each phase of a multi-phase development in the following manner:

1. One-third of the cash deposit after completion of one-third (monetary value), of the public and site improvements;
2. Two-thirds of the cash deposit after completion of two-thirds of the public and site

improvements; and

3. The balance at the completion of the public and site improvements.

Any irrevocable bank letter of credit or surety bond shall be returned to the applicant upon completion of the public improvements. If a development is to be completed in phases, then the Planning Commission may require the applicant to furnish a performance guarantee as provided in this section for each phase of the development. If an applicant has contracted with a third-party to construct the public and site improvements and the third-party has provided a bond meeting the requirements described above and the bond also names the Township as a third-party beneficiary of the bond, then the Planning Commission may accept that bond as meeting all or a portion of the performance guarantee required by this section.

SECTION 9.07 VIOLATIONS AND PENALTIES

SECTION 9.07.1 NUISANCE PER SE

Any land, dwellings, buildings or structures, including tents and trailer coaches, used, erected, altered, razed or converted in violation of this Ordinance or in violation of any regulations, conditions, permits or other rights granted, adopted or issued pursuant to this Ordinance are hereby declared to be a nuisance per se.

SECTION 9.07.2 INSPECTION

The Zoning Administrator shall have the duty to investigate each alleged violation and shall also have the right to inspect any property for which a zoning permit has been issued to ensure compliance with the plans and conditions of the zoning permit or approved site plan.

SECTION 9.07.3 PENALTIES

1. Any person, partnership, limited liability company, corporation, association or other entity who creates or maintains a nuisance per se or who violates or fails to comply with this Ordinance or any permit issued pursuant to this Ordinance shall be responsible for a municipal civil infraction and shall be subject to a fine of not more than Five Hundred and 00/100 (\$500.00) Dollars. Every day that such violation continues may constitute a separate and distinct offense under the provisions of this Ordinance. Nothing in this section shall exempt the offender from compliance with provisions of this Ordinance or prohibit the Township from seeking additional and/or equitable relief from any court to ensure compliance with the provisions of this Ordinance.
2. The Township Zoning Administrator is hereby designated as the authorized Township official to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court. The Township Board may also designate from time to time other officials to issue municipal infraction citations on behalf of the Township in connection with alleged violations of this Ordinance.
3. In addition to or in lieu of enforcing this Ordinance, as a municipal civil infraction, the Township may initiate proceedings in any court of competent jurisdiction to abate, eliminate, or enjoin the nuisance per se or any other violation of this Ordinance.

SECTION 9.07.4 STOP WORK ORDER

If construction or land uses are being undertaken contrary to a zoning permit, the Michigan Zoning Enabling Act, or this Ordinance, the Zoning Administrator or Deputy of the Zoning Administrator or any other official authorized by the Township Board is authorized to post a stop work order on the property at a suitable location, such as at an entrance, in order to prevent the work or activity from proceeding in violation of the Ordinance.

A person shall not continue, or cause or allow to be continued, construction or uses in a violation of a stop work order, except with permission of the enforcing agency to abate a dangerous condition or remove the violation, or except by court order. If an order to stop work is not obeyed, the enforcing agency may apply to the circuit court for an order enjoining the violation of the stop work order. This remedy is in addition to, and not in limitation of, any other remedy provided by law or ordinance, and does not prevent criminal or civil prosecution for failure to obey the order.

SECTION 9.08 CONFLICTING REGULATIONS

In the interpretation of this Ordinance, this Ordinance shall control unless there exists a conflict with any other Township Ordinances, in which case the more stringent regulations will rule.