

# ZONING ORDINANCE

City of Essexville, Michigan

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Reprinted with amendments adopted through November 17, 2014

Ordinance No. 209

CITY OF ESSEXVILLE ZONING ORDINANCE

An ordinance to establish zoning in the City of Essexville, pursuant to 110, of the Michigan Public Acts of 2006, as amended, and to establish districts or zones within which the use of land and structures may be restricted and regulated to:

- A. Meet the needs of the City of Essexville residents for food, fiber, energy and other natural resources, places of residence, recreation, industry, trade, service and other uses of land.
- B. Insure that uses of the land shall be situated in appropriate locations and relationships.
- C. Limit the inappropriate overcrowding of land and congestion of population and transportation systems and other public facilities.
- D. Facilitate adequate and efficient provisions for transportation systems, sewage disposal, water, energy, education, recreation and other public service and facility needs.
- E. Promote public health, safety and welfare and for those purposes may divide the City into districts of the number, shape and area considered best suited to carry out this Ordinance.
- F. Provide for the administering of this Act, which includes amendments, supplements or changes hereto.
- G. Provide for the enforcement of the Ordinance and a penalty for the violation of the terms thereof.
- H. Provide for a Board of Zoning Appeals and its powers and duties.

For each district or zone, regulations are imposed which designate the uses for which buildings or structures shall or shall not be erected or altered, and designating the trades, industries and other land uses or activities that shall be permitted or excluded or subjected to special regulations. Each district or zone may also regulate the height, the area, the bulk and the location of buildings and establish yard requirements.

In pursuance of authority conferred by the provisions of Act 110 of the Public Acts of the State of Michigan of 2006, as amended, The City of Essexville Ordains:

ARTICLE 1  
SHORT TITLE

This Ordinance shall be known and cited as the “City of Essexville Zoning Ordinance,” and shall be referred to herein as “this Ordinance.”

ARTICLE 2  
DEFINITIONS

Section 2.1 Index to Definitions of Words and Phrases

The following words and phrases defined in this Article are also organized for reference in the index found in the front of this Ordinance.

Section 2.2 Definitions Pertaining to Grammatical Usage

Words used in the present tense include the future tense. The singular number includes the plural and the plural the singular. The word “person” includes association, firm, partnership, corporation or an individual.

The term “shall” is always mandatory.

The word “occupied” and the word “used” shall be considered as though followed by the words “or intended, arranged, or designed to be used or occupied.”

Terms not herein defined shall have the meanings customarily assigned to them.

Section 2.3 Definitions Pertaining to Access

Alley: A public or legally established private thoroughfare other than a street which affords a secondary means of vehicular access to abutting property.

Street – Public: A street which is located within a right-of-way which has been dedicated to, and accepted by, the City of Essexville.

Where under the provisions of Mapped Improvements Act, Act 222, P.A. 1943, the City Council has adopted a precise plat showing the exact location of proposed future outside lines of new extended or widened public streets, such outside lines shall constitute a street as above defined for the purpose of establishing required setback.

Street - Private:<sup>1</sup> A privately owned and maintained, permanent, unobstructed easement which provides direct access to more than one legally described parcel and which has been approved by the City of Essexville. Legally documented easements that existed before the adoption of this ordinance do not require prior approval from the City of Essexville as set forth in Section 5.12 of this Ordinance.

Section 2.4 Definitions Pertaining to a Building

Building: Any structure having a roof including, but not limited to, tents, awnings, carports and such devices as house trailers or mobile homes, which have a primary function other than being a means of conveyance.

Structure:<sup>2</sup> Any constructed or erected material or combination of materials the use of which requires location on or connection to the ground, including, but not limited to, buildings, stadiums, radio towers, wind energy systems, sheds, storage bins, fences, signs, elevated patios or decks, and patios or decks with roofs or covers. All structures shall be subject to the setback requirements of this Ordinance unless specifically excepted.

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<sup>1</sup> Definition amended by Ordinance 2009-1; Adopted December 8, 2009 Effective December 23,2009

<sup>2</sup> Definition amended by Ordinance 2009-1; Adopted December 8, 2009 Effective December 23,2009

Elevated Patio or Deck. A structure without a roof or cover elevated to any extent above normal lot grade and designed or used for the purpose of pedestrian traffic or recreational use upon it. All elevated patios or decks shall be considered structures and subject to all setback requirements of this Ordinance and subject to the height restrictions of Section 5.10.

Patios or Decks with roofs or Covers. A structure, whether elevated or not above normal lot grade having a roof or cover partially or entirely over the area it covers and designed for the purpose of pedestrian traffic or recreational use upon it. Patios or decks with a roof or cover shall be considered buildings for the purposes of setback and the lot area restrictions of this Ordinance and subject to the height restrictions of Section 5.10.

#### Section 2.5 Definitions Pertaining to a Lot

Lot: A platted lot of a recorded subdivision, or a parcel of land shown in a request for a Zoning Compliance Permit, occupied or intended to be occupied by a principal and/or accessory building or use. (See Section 5.2)

Lot Corner: A lot where the corner interior angle at the intersection of the two streets is less than, or equal to, one hundred thirty-five (135) degree. A lot abutting upon a curved street or streets shall be considered a corner lot for the purpose of this Ordinance, if tangents to the curve at the two (2) points where the lot lines meet the curve form an interior angle of less than, or equal to, one hundred thirty-five (135) degrees.

Lot, Interior: Any lot other than a corner lot.

Lot, Through: A lot having a street line for both front and rear lot lines.

Lot of Record: A parcel of land, the deed to which is on record with the County Register of Deeds, and which exists as described.

#### Section 2.6 Definitions Pertaining to Land Use<sup>3</sup>

Agriculture: The art or science of cultivating the ground; the production of crops or livestock on a farm, excluding commercial greenhouses; the sale of nursery stock; riding stables; mink, fox and similar so-called fur farms; hog or poultry farms using garbage as a feed and processing of milk other than milk produced on the farm on which the processing is located.

Ambient: means the sound pressure level exceeded 90% of the time or less.

ANSI: means the American National Standards Institute.

Farm: A tract of land in single ownership or single operation, on which agriculture is a principal use.

Sound Pressure: An average rate at which sound energy is transmitted through a unit of area in specified direction. The pressure of the sound measured at a receiver.

Sound Pressure Level: The sound pressure mapped to a logarithmic scale and reported in decibels (dB).

Special Land Uses: Uses which are reasonably compatible with permitted uses and structures within a zoning district but which require special consideration in relation to the health, safety, convenience, and general welfare of the city's inhabitants.

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<sup>3</sup> Section amended by Ordinance 2009-1; Adopted December 8, 2009 Effective December 23,2009

Site Plan: A plan showing all salient features of a proposed development, so that it may be evaluated in order to determine whether it meets the provision of this ordinance. A site plan contains more comprehensive and detailed information about improvements proposed on the site than does a plot plan because of the more complex nature of land uses required to receive site plan approval, such as business, industrial and multiple family developments.

Use, Accessory: A subordinate use which is customarily incidental to the principal use on the same lot. In case a question arises the Board of Zoning Appeals shall rule.

Use, Principal: The primary and chief purpose for which a lot is used.

## Section 2.7 Definitions - Measurement of Land Use Areas and Required Open Space

Lot Line: The lines bounding a lot.

Lot Line, Front: In the case of an interior lot, the line separating said lot from the street. In the case of a corner lot or through lot, the line separating said lot from that street which is designated as the front street in the request for Zoning Compliance Permit.

Lot Line, Side:<sup>4</sup> A side lot line is any lot line that is not a front lot line or a rear lot line. A side lot line separating a lot from a street is an exterior side lot line. A side lot line separating a lot from another lot is an interior side lot line.

Lot Line, Rear:<sup>5</sup> A rear lot line is the lot line opposite and most distant from the front lot line. In case of an irregularly shaped lot, it shall be an imaginary line parallel to and farthest from the front lot line, not less than ten (10) feet long and wholly within the lot.

Lot Line, Street: Any lot line separating said lot from a street.

Lot Width: The length of a straight line drawn between the points where the front setback intersects the side lot lines.

Required Setback: The distance required to obtain the required front, side and rear open space provisions of this Ordinance.

Required Open Space: The open space established between the lot lines and the required setback, open, unoccupied and unobstructed by any building or part thereof, from the ground to the sky, except as otherwise provided in this Ordinance.

Required Front Open Space: The required open space extending the full width of the lot and of a depth equal to the required setback measured horizontally at right angles to the front lot line.

Required Rear Open Space: The required open space extending the full width of the lot and of a depth equal to the required setback measured horizontally at right angles to the rear lot line, or in case the rear lot line abuts an alley, to the centerline of the alley.

Required Side Open Space: The required open space extending from the front open space to the rear open space, of a width equal to the required side setback measured horizontally at right angles to the side lot line.

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<sup>4</sup> Definition amended by Ordinance 2009-1; Adopted December 8, 2009 Effective December 23,2009

<sup>5</sup> Definition amended by Ordinance 2009-1; Adopted December 8, 2009 Effective December 23,2009

## Section 2.8 Definitions Pertaining to Building Use

Principal Building: A building or, where the context so indicates, a group of buildings in which is conducted the principal use of the lot on which said building is situated.

Accessory Building:<sup>6</sup> A subordinate unattached building, including an unattached garage, which is a subordinate adjunct to the main building, the use of which is customarily incidental to the permitted use of the principal building. An accessory building, including an unattached garage may not exist on a lot or parcel of land if there is not also a principal building existing on the lot or parcel nor may an accessory building be temporarily or permanently occupied as living quarters.

Building, Un-enclosed: A building having no enclosure, either by screening or otherwise, other than its roof and such necessary supporting structure as will present the minimum obstruction to light, air and view. The term shall include such carports, porches, soffits, cornices, awnings and similar structures as meet the above definitions.

Club:<sup>7</sup> A group or organization created for recreational, artistic, athletic, academic, political, charitable, or other social purpose, and whose activities are not conducted for profit or material gain and does not involve merchandising, vending, or other commercial activities, except as required incidentally for the membership and purpose of the social club.

Construction Services:<sup>8</sup> Any of the activities commonly referred to as construction and shall include without limiting thereby, plumbing, heating, roofing, interior remodeling, excavating.

Family:<sup>9</sup> An individual or group of individuals occupying the same dwelling unit as a single housekeeping unit related by blood or marriage to the owner or renter of a dwelling unit by being either his or her spouse, parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, current in-laws, brothers, sisters, or legal wards and including a total of not more than two other persons not so related. A family or single family unit does not include any society, club, fraternity, sorority, association, lodge, organization or group of individuals.

Dwelling Unit: A room or group of rooms with bathroom and cooking facilities, designed as a unit for occupancy by only one (1) family for living, sleeping and cooking purposes.

Dwelling Types: For the purpose of this Ordinance, dwellings are separated into the following categories and herewith defined accordingly:

- A. Single-family dwelling: A conventionally constructed, detached, residential dwelling unit designed for and occupied by one (1) family.
- B. Single-family mobile, modular or pre-manufactured dwelling: A detached, residential dwelling unit designed for and occupied by one (1) family on a residential lot in compliance with the following standards:
  1. All standards required within individual residential districts in Article 2 of this Ordinance.
  2. A minimum floor-to-ceiling height of seven and one-half (7½) feet.
  3. A minimum exterior width for any side elevation of twenty-four (24) feet.

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<sup>6</sup> Definition amended by Ordinance 2014-4; Adopted November 17, 2014 Effective December 1, 2014

<sup>7</sup> Definition amended by Ordinance 2009-1; Adopted December 8, 2009 Effective December 23, 2009

<sup>8</sup> Definition added by Ordinance 2009-1; Adopted December 8, 2009 Effective December 23, 2009

<sup>9</sup> Definition amended by Ordinance No. 2014-3, Adopted June 10, 2014, Effective June 25, 2014

4. Firm attachment to a solid foundation not less than the perimeter area of the dwelling constructed in accordance with the City building code and all state regulations.
  5. No exposed wheels, towing mechanism or undercarriage is permitted.
  6. Connection to a public sewer and water supply or to private facilities approved by the local health department.
  7. The requirement of total storage area either within a basement, closet areas, in an attic or in a separate, fully enclosed structure constructed of equal or better quality than the principal dwelling not less in area than fifteen (15%) percent of the interior living area of the dwelling and exclusive of storage space- for automobiles.
  8. Aesthetic compatibility in design and appearance to conventional, on-site constructed homes including, where appropriate, a roof overhang, a front and rear or front and side exterior door, permanently attached steps or porch areas where an elevation differential requires the same and roof-drainage systems concentrating roof drainage and avoiding drainage along the sides of the dwelling.
  9. Prohibiting no room or other area additions to the home unless constructed of similar materials and quality of workmanship as in the principal structure, including an appropriate foundation and permanent attachment thereto.
  10. Compliance with all pertinent building and fire codes including, among others, those pertaining to newly manufactured homes or newly manufactured mobile homes.
  11. Properly maintained against deterioration and/or damage from the elements or otherwise by prompt and appropriate repairs, surface coating and other appropriate protective measures.
  12. It should be made clear that the foregoing standards do not apply to a mobile home located within a licensed mobile home park except to the extent required by state law or otherwise specifically set forth in this Ordinance.
- C. Single-family, mobile home dwelling: A detached residential dwelling unit designed for transportation on streets or highways on its own wheels or on flatbed or other trailers, after fabrication, and arriving at a licensed mobile home park as established by this Ordinance and state laws where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities and the like. A travel trailer is not to be considered as a mobile home.
- D. Two-family dwelling: A detached residential building containing two (2) dwelling units, designed for occupancy by not more than two (2) families. These may also be known as duplexes.
- E. Multiple-family dwelling structure: A residential building designed for or occupied by three or more families with the number of families in residence not exceeding the number of dwelling units provided.

Bedroom (abbreviated BR): A room designed in whole or in part for sleeping purpose.

Rooming Unit: A room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, with closet space and with or without bathroom, but without cooking facilities.

Central Hotel: A building or part of a building with a common entrance or entrances, containing dwelling units or rooming units or both, and may include a restaurant, cocktail lounge, public banquet halls, ballrooms or meeting rooms. "Motel Hotel" or "Motor Hotel" when not meeting the definition of motel is included in this definition of Central Hotel.

Residential Hotel: A building or part of a building, with a common entrance or entrances, containing dwelling units or rooming units or both, used primarily for permanent occupancy, and in which one (1) or more of the following special services are provided:

- A. Maid service
- B. Furnishing of units
- C. Linen service
- D. Telephone, desk or bellboy service

A restaurant or cocktail lounge may be included when accessible only through the lobby. Public banquet halls, ballrooms or meeting rooms are excluded.

Motel: A group of attached, semi-attached or detached rooming units with at least eighty (80%) percent of the rooming units having individual entrances leading directly to the outside of the building, with not more than two (2) dwelling units for occupancy by management staff only, with no building or part thereof exceeding two (2) stories in building height.

Rooming House: A building containing rooming units, providing lodging for compensation with or without meals, by pre-arrangement for periods exceeding ten (10) days, together with one (1) dwelling unit for occupancy by management. Rooming house is synonymous with boarding house and lodging house.

Garage, Private, Attached:<sup>10</sup> A structure part of or attached to a principal dwelling along at least 75% of the length of a structural wall on one side of the principal dwelling; not over one (1) story or sixteen (16) feet in height if a single story and not over 30 feet in height if a two story; having not more than one thousand (1,000) square feet of usable floor area; is for use solely by the owner or occupant of the principal dwelling located on the same lot; is to be used primarily for the storage of non-commercial motor vehicles and not more than one (1) commercially licensed vehicle; and wherein no public shop or services are conducted, and no retail, wholesale, or other commercial storage is conducted. A breezeway or covered walkway or structure between the principal building and a garage of even minimal length shall not qualify a garage as being attached for the purpose of increasing its allowed stories or height from that of an unattached garage.

Garage, Private, Unattached:<sup>11</sup> An accessory building for all purposes including setback requirements, not attached to a principal dwelling; not over one (1) story or sixteen (16) feet in height; having not more than one thousand (1,000) square feet of usable floor area; is for use solely by the owner or occupant of the principal dwelling located on the same lot; is to be used primarily for the storage of non-commercial motor vehicles and not more than one (1) commercially licensed vehicle; and wherein no

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<sup>10</sup> Definition amended by Ordinance 2014-4; Adopted November 17, 2014 Effective December 1, 2014

<sup>11</sup> Definition amended by Ordinance 2014-4; Adopted November 17, 2014 Effective December 1, 2014

public shop or services are conducted, and no retail, wholesale, or other commercial storage is conducted.

Garage, Commercial: Any garage other than private, community or public garage, for the storage, repair, rental, greasing, washing, sales, servicing, adjusting or equipping of automobiles or other motor vehicles.

Garage, Community: An enclosed building, having no public shop or service in connection therewith, for the storage of vehicles.

Garage, Public: Any garage other than a private garage or community garage available to the public, and which is used for the storage, repair, rental, greasing, washing, sales, servicing, adjusting or equipping of automobiles or other motor vehicles.

Gasoline Filling Station: Buildings or premises or portions thereof arranged or designed to be used for the retail sale of oil, gasoline or other fuel for the propulsion or lubrication of motor vehicles and which may include facilities for changing of tires, tube repairing, polishing, greasing, washing or servicing such motor vehicles, but excluding body repairing, bumping or painting.

Home Occupation: An occupation or hobby having traditional acceptance as being one customarily carried on in the home and is an accessory use of a dwelling that constitutes either entirely or partly the livelihood of a person living in the dwelling, said use that is conducted entirely within the dwelling and carried on by the inhabitants thereof and not more than one (1) employee and which is an accessory use of a dwelling unit for gainful employment which meets the following standards:

- A. The use is clearly incidental and subordinate to the use of the dwelling unit as a residence and not more than 25% of the floor area of the dwelling unit shall be used in the conduct of the home occupation. Examples of home occupations are tailoring, sculpturing, writing, telephone answering, lapidary work, and computer programming. Examples of those occupations not permitted are beauty parlors, repair shops, nursery schools, dancing studios, kennels, or private clubs.
- B. The use is carried on solely within the main dwelling unit and does not alter or change the exterior character or appearance of the dwelling, does not generate; excessive heat, offensive or dangerous light (such as that from welding), smoke odors, or noise audible on the adjoining premises and does not involve the use of hazardous or noxious materials;
- C. The use is located in a residential district; and
- D. The use does not generate increased traffic, parking, or utility usage in excess of what is normal for the residential neighborhood, and does not result in the outside storage or display of any product. Display of signs related in any way to the home occupation is prohibited.
- E. No home occupations shall be conducted in any accessory building or private garage.
- F. <sup>12</sup>Activities of a primary caregiver of medical marihuana as defined in this Section shall not be considered within the definition of a home occupation and shall be prohibited in all areas of the city except when conducted as a medical marihuana dispensary within the provisions and requirements of ARTICLE 11A.4 B. of this ordinance and subject to licensing as may be required by the general ordinances of the city.

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<sup>12</sup> Definition added by Ordinance 2011-01; Adopted May 10, 2011, Effective May 25, 2011

Adult Entertainment Facilities:<sup>13</sup>

- A. Adult Bookstore means an establishment that has, as a substantial or significant portion of its stock in trade, sexual paraphernalia, books, periodicals, magazines, newspapers, pamphlets, pictures, photographs, motion picture films, DVDs, and/or videotapes which are distinguished or characterized by their emphasis on matter depicting, describing or relating to nudity sadomasochistic abuse or sexual conduct.
- B. Adult Motion Picture Theater means a establishment, whether in a completely enclosed building or not, that offer, for an admission fee, membership fee, or other valuable consideration, the viewing during more than 25 percent of its operating hours of motion picture films, pictures or photographs which are distinguished or characterized by their emphasis on nudity sadomasochistic abuse or sexual conduct.
- C. Adult Theater means an enclosed building or any portion of a building which is used fro presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to nudity sadomasochistic abuse by any means of display, including, without limitation, by motion picture, mechanical amusement devices, television, including videotape or closed circuit, or live performance for observation by patrons therein.
- D. Adult Personal Service Business A business whose activities include a person, while partially nude, providing personal service for another person on an individual basis in a closed room. It includes, but is not limited to, the following activities and services: modeling studios, photographic studios, wrestling studios, individual theatrical performances, body paint studios and massage studios.
- E. Adult Cabaret An establishment which features topless dancers, and/or bottomless dancers, partially nude or seminude dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers, or topless and/or bottomless and /or partially nude or seminude waitpersons or employees or any other form or nude or partially nude or seminude service or entertainment.
- F. Nudity means uncovered or less than opaquely covered post pubertal human male or female genitals, pubic areas or buttocks.
- G. Sadomasochistic abuse means flagellation or torture by or upon a human.
- H. Sexual Conduct means any of the following actual or simulated acts of:
  - 1. Human sexual intercourse, homosexual or heterosexual;
  - 2. Human or animal masturbation;
  - 3. Bestiality;
  - 4. Fellatio;
  - 5. Cunnilingus;
  - 6. Human excretory functions;
  - 7. Sodomy; or
  - 8. Fondling or erotic touching of human genitals, pubic region, buttocks or breasts.

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<sup>13</sup> Definition amended by Ordinance 2009-1; Adopted December 8, 2009, Effective December 23,2009

Place of Amusement: Shall be defined as any place where five (5) or more amusement devices are maintained or operated, except taverns, bars or other places licensed by the Michigan Liquor Control Commission.

Amusement Devices: Shall be defined as any machine, electronic or mechanical, which upon insertion of a coin, token, slug, disc, or plate, may be operated by the public generally for use as a game, or contest of any description, or entertainment or amusement of any description.

Drug paraphernalia<sup>14</sup>: All equipment, products and materials of any kind, which is used, intended for use, or designed for use in planting, propagation, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance as defined in Section 7104 of the Michigan Public Health Code (Act No. 368 of the MI Public Acts of 1978, as amended), in violation of the laws of the State of Michigan.

Greenhouse<sup>15</sup>: A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of delicate or out-of-season plants.

Marihuana, also known as Marijuana, also known as Cannabis<sup>16</sup>: The term shall have the meaning given to it in Section 7601 of the Michigan public health code, 1978 PAS 368, MCL 333.7106, as referred to in section 3(d) of the Michigan Medical Marihuana Act, PA 2008, Initiated Law, MCL 333.26423(d). Any other term pertaining to marihuana used in this Chapter and not otherwise defined shall have the meaning given to it in the Michigan Medical Marihuana Act and/or the General Rules of the Michigan Department of Community Health issued in connection with that Act.

Medical use of Marihuana<sup>17</sup>: The acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, as defined under the Medical Marihuana Act, PA 2008, initiated Law, MCL 333.26421 *et seq*.

Primary Caregiver<sup>18</sup>: Means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs and who possesses a medical marihuana registry identification card issued by an agency of the State of Michigan under the authority of the Michigan Medical Marihuana Act, PA 2008, initiated Law, MCL 333.26421 *et seq*

Qualifying Patient<sup>19</sup>: Means a person who has been diagnosed by a physician as having a debilitating medical condition and who possesses a medical marihuana registry identification card issued by an agency of the State of Michigan under the authority of the Michigan Medical Marihuana Act, PA 2008, initiated Law, MCL 333.26421 *et seq*

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<sup>14</sup> Definition added by Ordinance 2011-01; Adopted May 10, 2011 Effective May 25, 2011

<sup>15</sup> Definition added by Ordinance 2011-01; Adopted May 10, 2011 Effective May 25, 2011

<sup>16</sup> Definition added by Ordinance 2011-01; Adopted May 10, 2011 Effective May 25, 2011

<sup>17</sup> Definition added by Ordinance 2011-01; Adopted May 10, 2011 Effective May 25, 2011

<sup>18</sup> Definition added by Ordinance 2011-01; Adopted May 10, 2011 Effective May 25, 2011

<sup>19</sup> Definition added by Ordinance 2011-01; Adopted May 10, 2011 Effective May 25, 2011

## Section 2.9 Definitions Pertaining to Building Measurements

**Building Height:** The vertical distance from grade to the highest point of the roof surface for flat roofs; the vertical distance to the deck line for mansard roofs; the average height between eaves and ridge for gable, hip and gambrel roofs.

**Grade:** For the purposes of determining building height:

- A. All walls approximately parallel to and not more than five (5) feet from a street lot line shall be considered as adjoining the street.
- B. For buildings adjoining one (1) Street only, grade is the elevation of the sidewalk at the center of that wall which adjoins the street, except that in case the average elevation of the finished surface adjacent to the exterior walls of the building is lower than the elevation of the sidewalk, or where there are no sidewalk grades, the grade shall be the average elevation of the ground on the lowest side adjacent to the exterior walls of the building.
- C. For buildings adjoining more than one (1) street, grade is the elevation of the sidewalk at the center of the wall adjoining the street having the highest sidewalk elevation.
- D. For buildings having no wall adjoining the street, grade is the average level of the ground, finished surface, adjacent to the exterior walls of the building.
- E. In alleys the surface of the paving shall be considered to be the sidewalk elevation.
- F. Where the elevation of the sidewalk or alley paving has not been established, the City Engineer shall determine such elevation for the purpose of this Ordinance.

**Story:** That portion of a building included between the upper surface of any floor and the upper surface of any floor above, or any portion of a building between the topmost floor and the roof having a usable floor area equal to at least fifty (50%) percent of the usable floor area of the floor immediately below it. A top floor area under a sloping roof with less floor area is a half story. The first story shall be considered the lowest story of which the ceiling is more than four (4) feet above the average contact ground level at the exterior walls of the building.

**Usable Floor Area, Residential:** The measurements of usable floor area for residential uses shall be the sum of the area of the first story measured to the exterior face of exterior walls, and the area, similarly measured, having more than seven (7) feet six (6) inches headroom, of any upper story that is connected by a fixed stairway and which may be made usable for human habitation, but excluding the floor area of basements, garages, accessory buildings, attics, breezeways and unenclosed porches.

**Usable Floor Area Non-Residential:** The measurement of usable floor area for non-residential uses shall be to the exterior face of exterior walls on the first story and any other story connected by a fixed stairway, escalator, ramp or elevator, which may be made fit for human habitation, the measurement shall include the floor area of all accessory buildings measured similarly, but exclude the floor area used exclusively for heating and other mechanical equipment, un-enclosed porches, light shafts, public corridors and public toilets.

**Donation Box:** An unattended receptacle or structure designed with a door, slot, or other opening that is intended to accept donated goods or items.<sup>20</sup>

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<sup>20</sup> Definition added by Ordinance 2013-4 August 9, 2013, effective August 24, 2013.

## Section 2.10 Definitions Pertaining to Essential Services and Non-conformance

Public Utility: Any person, firm, corporation, municipal department or board duly authorized to furnish and furnishing under state or municipal regulation, to the public, electricity, gas, steam, communication, telegraph, transportation, water or sewer.

Essential Services: The erection, construction, alteration or maintenance by public utilities or municipal departments or commissions, of overhead, surface or underground gas, electrical, steam or water, distribution or transmission systems, collection, communication, supply or disposal systems, including mains, drains, sewers, pipes, conduits, tunnels, wires, cables, fire alarm boxes, traffic signals, hydrants, towers, poles, electrical substations, gas regulator stations and other similar equipment and accessories in connection therewith, but not including buildings, except those necessary to house the foregoing, reasonably necessary for the furnishing of adequate service by such public utility or municipal department or commission or for the public health or safety or general welfare. Such necessary buildings shall be designed to conform harmoniously to the general architecture of the district in which it is to be erected.

Non-conforming Use: A building, structure or use of land existing at the time of enactment of this Ordinance, and which does not conform to the regulations of the district or zone in which it is situated.

ARTICLE 3  
ZONE DISTRICTS

Section 3.1 Classification of Districts

The City of Essexville shall be and is hereby divided into districts as enumerated in Articles 7 to 14A, Schedule of Regulations.

Section 3.2 Required Conformity to District Regulations

Except as otherwise provided in this Ordinance, no structure or land shall hereafter be used or occupied and no structure or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified for the district in which the structure or land is located.

Section 3.3 District Boundaries Shown on Zoning Map

The boundaries of said districts are hereby established as shown on the zoning map, which accompanies this Ordinance and which zoning map with all notations, references and other information shown thereon shall be as much a part of this Ordinance as if fully described herein. The zoning map shall be certified as the official copy by the City Clerk and shall be kept on display in the City Clerk's office. Maps and descriptions accompanying enacted amendments shall be displayed adjacent to the official copy until such time as the official copy is corrected. The official copy shall be reviewed annually and if so ordered by resolution of the City Council, the official copy shall be corrected to show all amendments and the accuracy and completeness of such corrections shall be certified thereon by the City Clerk.

Section 3.4 Interpretation of Zoning Map

Where, due to the scale, lack of detail or illegibility of the zoning map accompanying this Ordinance, there is an uncertainty, contradiction or conflict as to the intended location of any district boundary as shown thereon, interpretation concerning the exact location of the district boundary line shall be determined by the Board of Zoning Appeals. The Board, in arriving at a decision on these matters, shall apply the following standards:

- A. District boundary lines are intended to follow centerlines of: alleys or streets, rights-of-way, water courses or lot lines; or be parallel or perpendicular thereto, unless such district boundary lines are otherwise obviously indicated as shown on the zoning map.
- B. Where district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be such boundaries.
- C. In non-subdivided property, or where a district boundary divides a lot, the location of any such boundary, unless the same is indicated by dimensions shown on the zoning map, shall be determined by the use of the map scale shown thereon.
- D. If, after the application of the foregoing rules, uncertainty exists as to the exact location of a district boundary, the Board of Zoning Appeals shall determine and fix the location of said line in a reasonable manner.

ARTICLE 4  
USE REGULATIONS

Section 4.1 General

Except as otherwise provided herein; regulations governing land and building use are hereby established as shown in Articles 7 through 14A. Any use not expressly permitted is prohibited. Uses requiring Board of Zoning Appeals Special Exceptions Permit are permissible only if in the opinion of the Board of Zoning Appeals adequate conditions exist or can be imposed that will make such uses compatible with the purposes of this Ordinance and intent and principal uses of the district. Otherwise, such uses are prohibited uses. (Section 18.4)

Section 4.2 Use of Accessory Building Prior to Use of Principal Building Prohibited

No accessory building may be used prior to its principal building or principal use except as a facility of construction of said principal building or principal use. This exception is a temporary one which shall lapse one (1) year after issuance of the Zoning Compliance Permit.

Section 4.3 Non-Residential Mixed With Residential Prohibited

Except where specifically provided for in this Ordinance, non-residential and residential use on the same lot or in the same building is prohibited.

Section 4.4 Restriction on Use and Location of Donation Boxes<sup>21</sup>

Donation boxes, as defined by this code, shall not be located in any zoning district unless specifically provided for as a use permitted by right in the articles regulating uses in the zoning districts created by this code, shall not be allowed nor considered a permitted accessory use customarily incidental to the permitted use in any other zoning district, and shall not be a use permitted by issuance of a special land use permit in any other district.

**Section 4.4 Existence of Accessory Building without Existence of a Principal Building Prohibited<sup>22</sup>**

No accessory building of any type shall be allowed to exist upon any parcel of land in a zoning district designated as R-1 Single-Family Residential, O Office District, or R-O Residential-Office unless there also exists on the same parcel of land a principal building. If a principal building shall cease to exist on any parcel of land in said districts, all accessory buildings on such parcel must also be removed within a period of \_\_\_\_\_ from the time the principal building is removed.

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<sup>21</sup> Section added by Ordinance 2013-4 adopted August 9, 2013, effective August 24, 2013.

<sup>22</sup> Section added by Ordinance 2014-4 Adopted November 17, 2014, Effective December 1, 2014

ARTICLE 5  
AREA, HEIGHT, BULK AND PLACEMENT REGULATIONS

Section 5.1 General

Except as otherwise provided herein; regulations governing area, height, bulk and placement are set forth in Article 7, Schedule of Regulations.

Section 5.2 Encumbering Land Required to Satisfy Regulations

No portion of a lot necessary for compliance with the provisions of this Ordinance in regard to area, height, bulk and placement regulations in connection with an existing or proposed building, structure or use, shall, through sale or otherwise, again be used as a part of the lot required in connection with any other building, structure or use.

Section 5.3 Exceptions to Height Limits

The height limits of this Ordinance may be modified by appeal to the Board of Zoning Appeals in its application to church spires, belfries, cupolas, penthouses, domes, water towers, observation towers, radio towers, masts and aerials, flagpoles, chimneys, smokestacks, ventilators, skylights, derricks, conveyors, cooling towers and other similar and necessary mechanical appurtenances pertaining to and necessary to the permitted uses of the districts in which they are located.

Section 5.4 Averaging Existing Front Open Space

In residential districts where the average front open space for existing buildings adjacent to a lot on either side, within one hundred (100) feet, exceeds the minimum specified in this Ordinance, a front open space shall be provided on the lot equal to this greater average depth, but need not exceed forty (40) feet. Where such average front open space is less than minimum specified, the required front open space may be reduced to this lesser depth, but in no case to less than twenty (20) feet from the street lot line. For the purpose of computing such average front open space, an adjacent vacant lot shall be considered as having the minimum front open space required in the district.

Section 5.5 Exceptions to Required Open Space

The following projections into required open space are permitted: sills, belt courses, cornices, eaves, gutters, chimneys or pilasters projecting not more than fourteen (14) inches into any required open space.

Section 5.6 Corner Lot Setback on Side Street

Every corner lot in a residential district having on its side street an abutting interior lot shall have a minimum setback from the side street equal to the minimum required front setback of the district in which it is located, provided however, that this does not reduce the buildable width of a lot of record to less than thirty (30) feet. On corner lots where a rear open space abuts a side open space on the adjoining lot, accessory buildings on the corner lot shall have a minimum setback from the rear lot line a distance equal to the smaller of the side setbacks required for the lot abutting the corner lot.

### Section 5.7 Accessory Buildings

Accessory buildings in residential districts and P-1 Parking Districts shall conform to the following regulations except as may be otherwise provided in this Ordinance:

- A. Shall not exceed sixteen (16) feet in building height.
- B. In residential districts, may be erected in the rear open space except when built as a part of the principal building but shall not be erected in any required front or side open space.
- C. In a Residential R-1 District, in no case shall the area of such accessory use buildings occupy more than thirty-five (35%) percent of the rear open space and be closer than three (3) feet from any adjacent rear lot line.
- D. On any corner lot in a residential district, no part of any accessory building shall be nearer the exterior side lot line than the required setback as regulated in Article 7.
- E. Detached garages not physically connected to the dwelling or principal use by common wall or roof shall be deemed as accessory buildings for the purpose of this Ordinance. Attached garages shall be considered part of the principal use or dwelling.

### Section 5.8 Application to Lots of Record

Where the owner of a lot of record does not own and cannot reasonably acquire sufficient adjacent land to enable him to conform to the open space and other requirements herein prescribed, such lot may be used by said owner as a building site provided the open space and other provisions conform as closely as possible in the opinion of the Board of Zoning Appeals to the requirements for the district in which it is located and subject to Section 18.4.

Where two (2) or more abutting lots of record are in one (1) ownership, either in fee simple and/or under a vendee's land contract interest, or subsequently come to be held in one (1) ownership, they shall be considered the same as a single lot of record for the purpose of this Ordinance, and the provisions of this Ordinance shall not thereafter be circumvented or avoided by the willful sale or conveyance of a part or portion of any parcel or parcels.

Where the City of Essexville under an officially adopted Urban Renewal Plan sells lots which do not meet Articles 7 to 14 requirements for lot width or lot area, such lot may be used by owner as a building site provided all other provisions of this Ordinance are met, it being hereby determined that such lots constitute the maximum feasible lot width and lot area.

### Section 5.9 Double Frontage Lots

- A. Where the rear of a lot abuts upon a street, the depth of a rear yard shall be increased if necessary to conform to the requirements for front yard on such rear street.
- B. Where it is desired to erect a building from street to street or to within fifty (50) feet of either of these streets, no rear yard shall be required, but there shall be provided on each side lot line an area equal to the area of the rear yard normally required in addition to the normal side yard requirements.

## Section 5.10 Height Restrictions for Elevated Patios or Decks

No elevated patio or deck shall be constructed wherein its elevated surface deck area is above six feet of normal lot grade and any vertical railing attached to the deck shall not exceed four feet in height above the top of the deck surface. All elevated patios or decks shall be considered structures and subject to all setback requirements of this Ordinance. Elevated patios or decks with roofs or covers shall not exceed a total height of fifteen feet.

## Section 5.11 Allowance for Structural Aid for Person(s) With a Disability

The Zoning Administrator shall be empowered to issue a letter stating appropriate conditions to a property owner where a person with a disability resides at or frequents which shall allow the construction of a structural aid which would otherwise be in violation of the requirements of the height, area, and set back requirements of this Ordinance upon a showing to the satisfaction of the Zoning Administrator that:

- A. a person with a disability resides at or frequents the property;
- B. a structural aid such as a ramp, weather cover, or other similar apparatus which would allow a person with a disability to more easily function is needed; and
- C. in the opinion of the Zoning Administrator, the structural aid will not overly or unnecessarily infringe upon the surrounding property and shall be constructed with the minimal possible variance to the requirements of this Ordinance.

The letter allowing the structural aid shall state that all structures allowed must be removed within sixty (60) days from the time that the person with a disability no longer resides at or frequents the property.

If the Zoning Administrator shall refuse or fail to issue a letter to the satisfaction of any property owner, the property owner may petition the Zoning Board of Appeals by payment of its regular fees for expansion of the right to create structures as allowed herein. Fees paid shall not be refunded if the Board should grant a greater variance than the Zoning Administrator had allowed. This section shall not relieve any requirement that may exist to obtain a building permit.

## Section 5.12 Private Streets

Private streets shall not be constructed or used without approval of the City of Essexville. Applications to construct and/or use a private street must be reviewed by the Planning Commission prior to issuance of a permit to construct and/or use of said private street. The Planning Commission shall submit a report to the City Council with its findings and recommendations within thirty (30) days following conclusion of its review of the application.

An application to construct and/or use a private street shall be submitted to the City Clerk and shall include, at a minimum:

- A. A preliminary street plan, prepared by a registered professional engineer must be submitted to and approved by the Planning Commission. Said plan shall be at a scale of no less than 1 inch - 100 feet and shall clearly indicate the location of the private street, the length of the private street, and all parcels that will be served by the private street.
- B. Said plan shall also indicate any other facilities that will be located within the street right of way, such as, but not limited to storm drainage, sanitary sewers, water mains, natural gas lines and underground electric and telephone lines.
- C. Proposed deed restrictions and/or deed conveyances must be submitted to and approved by the Planning Commission including;

1. How permanent access for pedestrian and vehicular traffic will be assured for each parcel.
2. Documentation that the City of Essexville has a right to construct public or semipublic utility systems within the private street right of way.
3. A plan for maintaining, snowplowing, or for improving the private street, or for constructing public or semipublic utility systems within said street and a methodology for assessing and collecting the costs of such maintenance and/or improvements to the parcels and lots served by the private street.

In the event there are lots which abut the proposed private road which are not owned by the applicant and in the further event any of these owners are unwilling to agree to the requirements set forth in this section, the Planning Commission may waive such compliance provided that the costs attributable to these lots is satisfactorily provided for and ownership of the entire road is satisfactorily provided for.

4. That all lots serviced by the private street shall own to the centerline of the proposed private street right of way. Further, the parcel of property subject to the private street right of way may not be conveyed separate and apart from the individual lots serviced by the private street.
- D. The Planning Commission shall review the particular circumstances and facts applicable to each proposed private street in terms of general standards contained in this Section and shall make a determination as to whether the proposed street to be developed on the subject parcel meets the following standards and requirements.
1. It must be consistent with and in accordance with the general objectives, intent and purposes of this Ordinance.
  2. It must be designed, constructed, operated, maintained and managed so as to be compatible with existing adjacent land uses and appropriate in appearance with the existing or intended character of the general vicinity.
  3. It must be served adequately by essential public facilities and services including but not limited to highways, streets, police and fire protection, drainage structures, municipal sanitary sewer and water, refuse disposal, or that parties or agencies responsible for the establishment of the proposed use shall be able to economically provide any such service together with sufficient deed restrictions and/or easements to accomplish the said purpose.
  4. It must be consistent in assuring that the general public health, safety and welfare will not be infringed upon.
  5. It must be in complete compliance with all general and specific standards and conditions imposed pursuant to this Ordinance, other applicable local ordinances, and other applicable state and federal requirements.
  6. The Planning Commission may, at its discretion, require that persons receiving approval to develop a private street post a bond or provide a sufficient escrow that guarantees performance of conditions set forth in the approval of the private street.

ARTICLE 6  
GENERAL REQUIREMENTS

Section 6.1 Issuance of Building Permit - Approved Site Plan

- A. Submission of Site Plan: Site plan review shall be required of all uses in Residential-Office, Business, Office and Industrial Districts and of Multiple-Family Dwellings (except for single and two-family dwellings) and of uses permitted by all Special Land Use Permits.
- B. Review of all site plans shall be performed by the City Planning Commission. The Planning Commission may delegate responsibility for review to the Zoning Administrator for certain classes of site plans by size or function.
- C. A "Building Permit" or "Certificate of Occupancy" shall not be issued prior to final approval of the site plan as required by this Article and pursuant to Article 17 of this Ordinance.
- D. Site Plan Contents: Site plans for the proposed use shall be submitted, including the following information:
  - 1. A properly scaled site plan with a preferred scale of 1" = 20' or greater.
  - 2. Location, arrangement and dimensions of existing driveways, streets, sidewalks, arrangement of structure(s).
  - 3. General layout of existing vegetation and of proposed landscaping.
  - 4. Approximate size, location, height, floor area and juxtaposition of all structures.
  - 5. General relationship to all utilities, including sanitary sewerage disposal, water supply, storm drainage, gas, rubbish disposal, electricity and telephone.
  - 6. A schedule of usable floor areas and areas, building height and setback, net land coverage and number of parking spaces provided.
- E. Site Plan Standards: The Planning Commission shall review the site plans in terms of the following standards:
  - 1. Safe and convenient vehicular access to and egress from the proposed use without interference with surrounding transportation patterns.
  - 2. Provision of bicycle and/or pedestrian access, if appropriate.
  - 3. Impact of structures, fencing, lighting and landscaping on adjacent land uses and properties.
  - 4. Appropriate consideration of environmental concerns including natural resources, air quality, noise levels, rubbish disposal and storm runoff.
  - 5. Continuance of established area patterns of landscaping, setbacks, structural materials and street furniture.

## Section 6.2 Non-conforming Uses

It is the intent of this Ordinance to permit the continuance of a lawful use of any building or land existing at the effective date of this Ordinance. However, except as herein provided, no building, structure, or use or part thereof shall be used, altered, constructed or reconstructed except in conformity with the provisions of this Ordinance, and further, it is hereby declared that the existence of non-conforming uses is contrary to the best interests of the general public. Further, it is hereby declared to be the policy of this community, as expressed in this Ordinance, to discontinue non-conforming uses in the course of time as circumstances permit, having full regard for the rights of all parties concerned.

A. Elimination of Non-conforming Uses: In accordance with the applicable State and local ordinances, the City, through its agents, may acquire properties on which non-conforming buildings or uses are located, by condemnation or other means, and may remove such uses or structures. The resultant property may be leased or sold for a conforming use or may be used by the City for a public use. The net cost of such acquisition may be assessed against a benefit district, or may be paid from other sources of revenue.

1. Whenever a non-conforming use has been discontinued for twelve (12) consecutive months or for eighteen (18) months during any three (3) year period, such discontinuance shall be considered conclusive evidence of an intention to abandon legally the non-conforming use.

At the end of this period of abandonment, the non-conforming use shall not be reestablished, and any future use shall be in, conformity with the provisions of this Ordinance.

B. Non-conforming Uses of Land: The non-conforming uses of land existing at the effective date of this Ordinance, where no building is located, may be continued, PROVIDED dimensional requirements are complied with, and further PROVIDED that no buildings are to be constructed after the effective date of this Ordinance, except that will conform to district requirements within which use is located, and further PROVIDED all other pertinent requirements of Section 6.2 are complied with.

C. Non-conforming Signs: Signs existing at the time of the enactment of this Ordinance and not conforming to its provisions, but which were constructed in compliance with previous regulations shall be regarded as non-conforming signs which may be continued if properly repaired and maintained as provided in this code and continue to be in conformance with other ordinances of this municipality.

Non-conforming signs which are structurally altered, relocated or replaced shall comply immediately with all provisions of this code.

D. Illegal Non-conforming Uses: Non-conforming uses of buildings or land existing at the effective date of this Ordinance established without a building permit or not shown on the tax records as a non-conforming use prior to the last official assessment roll, or those non-conforming uses which cannot be proved conclusively as existing prior to the effective date of this Ordinance, shall be declared illegal non-conforming uses and shall be discontinued within a period of three (3) years following the effective date of this Ordinance.

- E. Reconstruction and Restoration: Any lawful non-conforming use damaged by fire, explosion, or act of God, or by other causes, may be restored, rebuilt, or repaired, PROVIDED that such restoration does not exceed sixty (60%) percent of its State Equalized assessed value as determined by the assessing officer, exclusive of foundation, and PROVIDED that said use be the same or more nearly conforming with the provisions of the district in which it is located.
- F. Repair of Non-conforming Buildings: Nothing in this Ordinance shall prohibit the repair, improvement or modernizing of a lawful non-conforming building to correct deterioration, obsolescence, depreciation and wear, provided that such repair does not exceed an aggregate cost thereby increasing the assessed value by more than thirty (30%) percent as determined by the assessing officer unless the subject building is changed by such repair to a conforming use.
- All reconstruction and restoration of properties so damaged shall be completed so as to conform to the standards of all building, plumbing, electrical, fire, and other codes and general requirements of the city ordinances existing at the time the reconstruction and restoration of the properties occurs.<sup>23</sup>
- G. Changing Uses: If no structural alterations are made, The Board of Appeals may authorize a change from one non-conforming use to another non-conforming use, PROVIDED the proposed use would be more suitable to the zoning district in which it is located than the non-conforming use which is being replaced. Whenever a non-conforming use has been changed to a more nearly conforming use or to a conforming use, such use shall not revert or be changed back to a non-conforming or less conforming use.
- H. Prior Construction Approval: Nothing in this Ordinance shall prohibit the completion of construction and use of a non-conforming building for which a building permit has been issued prior to the effective date of this Ordinance, PROVIDED that construction is commenced within thirty (30) days after the date of issuance of the permit and that the entire building shall have been completed according to plans filed with the permit application within one (1) year after the issuance of the building permit.
- I. District Changes: Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of another classification, the provisions of this Section shall also apply to any existing uses that become non-conforming as a result of the boundary changes.

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<sup>23</sup> Paragraph added by Ordinance 2009-1; Adopted December 8, 2009, Effective December 23, 2009

ARTICLE 7  
R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT  
Schedule of Regulations

Section 7.1 Intent

The regulations of this district are intended to encourage a suitable environment for families typically with children. Uses are limited to one family dwellings, along with certain other uses such as schools, parks and playgrounds, which provide a desirable neighborhood environment. In keeping with the intent, development is regulated to a moderately low density. Commercial and other uses which tend to be incompatible with the intent are prohibited.

Section 7.2 Uses Permitted by Right

- A. Single-family dwelling.
- B. Home Occupations as defined in Section 2.8 of this Ordinance
- C. Churches

Section 7.3 Permitted Accessory Uses

- A. Private garage.
- B. Garden house, tool house, swimming pool, playhouse or greenhouse, none being used for commercial purposes.
- C. Signs in accordance with Article 15.4.
- D. Fences.
- E. Automobile parking, not in excess of automobiles owned by the occupants, plus two (2) additional spaces.
- F. Any use customarily incidental to the permitted principal use.

Section 7.4 Uses Permitted by Special Land Use Permit

The following uses of land and structures may be permitted after a public hearing in accordance with Section 17.2.c by issuance of a Special Land Use Permit following the procedures outlined in Article 17, providing all of the applicable conditions for required setback dimensions, area, height, bulk and placement regulations and off-street parking are met:<sup>24</sup>

- A. Public parks, playgrounds and playfields
- B. Institutional uses for medical, health, and educational
- C. Public utility service buildings or regulator station
- D. Planned unit developments

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<sup>24</sup> Paragraph amended by Ordinance 2009-1; Adopted December 8, 2009, Effective December 23, 2009

## AREA, HEIGHT, BULK AND PLACEMENT REGULATIONS

### Section 7.5 Minimum Building Area

Area in square feet - seven hundred twenty (720)

### Section 7.6 Minimum Building Bulk

Bulk in cubic feet - five thousand seven hundred sixty (5,760)

### Section 7.7 Maximum Building Area

Accessory building shall not exceed 35% of rear yard area

Coverage of lot including accessory building in percent of lot area : 35%

Minimum Required Setback Dimensions in Feet for All Buildings and Structures

### Section 7.8 Front Yard (see Article 5, Section 5.4)

Twenty-five (25) feet

### Section 7.9 Side Yards

Least one - five (5) feet

### Section 7.10 Side Yards

Total or two (2) - fifteen (15) feet

### Section 7.11 Rear Yard

Twenty-five (25) feet

### Section 7.11A Items Covered by Setbacks and Exceptions

All buildings and structures, exclusive of driveways or sidewalks, shall be subject to the setback requirements of Sections 7.8 through 7.11 except as otherwise specifically excepted by this Ordinance. However, children's swing sets, sand boxes, and play houses not to exceed fifty (50) square feet as well as swimming pool slides and dog houses, elevated patios and decks shall be excepted from the rear yard setback requirements of Section 7.11 but shall be located more than three (3) feet from any property line in the rear yard.

### Section 7.12 Maximum Building Height<sup>25</sup>

A principal building, including its attached garage, may be two and one-half (2 1/2) stories to a maximum of 30 feet, an unattached garage may be only one story to a maximum of 16 feet, and all other accessory buildings may be only of one story to a maximum of 16 feet. A breezeway or covered walkway or structure between the principal building and a garage of even minimal length shall not qualify a garage as being attached for the purpose of increasing its allowed stories or height from that of an unattached garage.

### Section 7.13 Minimum Lot Size

Minimum lot size area (in square feet) - seven thousand two hundred (7,200). In the event that a previously platted lot does not contain the required square footage, such requirement shall be waived unless the owner possesses sufficient adjacent land to permit compliance with this section which land shall then be retained by the owner to create the minimum 7,200 square feet area required.

### Section 7.14 Minimum Lot Width

Minimum lot size width - sixty (60) feet. In the event that a previously platted lot does not contain the required width, such requirement shall be waived unless the owner possesses a

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<sup>25</sup> Definition amended by Ordinance 2014-4; Adopted November 17, 2014 Effective December 1, 2014

sufficient adjacent land to permit compliance with this section which land shall then be retained by the owner to create the minimum sixty (60) feet width required.

ARTICLE 8  
O OFFICE DISTRICT  
Schedule of Regulations

Section 8.1 Intent

It is the intent of this district to provide a suitable environment for certain types of land uses, primarily office in character, which is more compatible with one another than among typical retail or industrial uses.

Section 8.2 Uses Permitted by Right

- A. Dental or medical clinic.
- B. Funeral homes and mortuary establishments.
- C. Office building uses resulting from any of the following occupations: accounting, administration, architecture, clerical, drafting, executive, engineering, graphic arts, law, medical and dentistry pharmaceutical laboratory, scholarly sales or writing provided that there shall be no display of any actual product for sale.
- D. Office and workshop of a decorator, dressmaker or tailor, provided that the establishment does not employ more than five (5) persons at one time.
- E. Medical and pharmaceutical laboratory.
- F. Studio for professional work or instruction of any form of fine arts, music, drama and dance.

Section 8.3 Permitted Accessory Use

- A. Any use customarily incidental to the permitted principal use.

Section 8.4 Uses Permitted by Special Land Use Permit

The following uses of land and structures may be permitted after a public hearing in accord with Section 17.2C by issuance of a Special Land Use Permit following the procedures outlined in Article 17, providing all of the applicable conditions required for setback dimensions, area, height, bulk and placement regulations and off-street parking are met:<sup>26</sup>

- A. Public parks, playgrounds and playfields
- B. Institutional uses for medical, health, and educational
- C. Public utility service buildings or regulator station
- D. Personal services and small retail businesses primarily serving the permitted uses.
- E. Clubs or lodges.

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<sup>26</sup> Paragraph amended by Ordinance 2009-1; Adopted December 8, 2009, Effective December 23, 2009

## AREA, HEIGHT, BULK AND PLACEMENT REGULATIONS

### Section 8.5 Maximum Building Area

Coverage of lot including accessory building in percent of lot area: 35%

### Section 8.6 Front Yard

Twenty-five (25) feet

### Section 8.7 Side Yards

Least one - five (5) feet

### Section 8.8 Side Yards

Total of two (2) - fifteen (15) feet

### Section 8.9 Rear Yard

Thirty (30) feet

### Section 8.10 Maximum Building Height<sup>27</sup>

A principal building, including its attached garage, may be two and one-half (2 1/2) stories to a maximum of 30 feet, an unattached garage may be only one story to a maximum of 16 feet, and all other accessory buildings may be only of one story to a maximum of 16 feet. A breezeway or covered walkway or structure between the principal building and a garage of even minimal length shall not qualify a garage as being attached for the purpose of increasing its allowed stories or height from that of an unattached garage.

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<sup>27</sup> Definition amended by Ordinance 2014-4, Adopted November 17, 2014, Effective December 1, 2014.

ARTICLE 9  
R-O RESIDENTIAL-OFFICE DISTRICT  
Schedule of Regulations

Section 9.1 Intent

It is the intent of this district to provide a suitable environment for certain types of land uses, primarily office in character, which are more compatible with one another than among typical retail or industrial uses. To these ends the district permits most types of residential uses and certain non-merchandising uses with adequate open space. New developments with these types of uses will be encouraged consistent with high land valuations at locations where harmonious land use arrangement can be achieved in the vicinity.

Section 9.2 Uses Permitted by Right

- A. Single-family dwellings
- B. Two-family dwellings.
- C. Multiple-family dwellings.
- D. Office building uses resulting from any of the following occupations: accounting, administration, architecture, clerical, drafting, executive, engineering, graphic arts, law, medicine, scholarly sales of writing provided that there shall be no display of any actual product for sale.
- E. Office and workshop of a decorator, dressmaker or tailor provided that the establishment does not employ more than five (5) persons at one time.
- F. Medical, dental and pharmaceutical laboratory
- G. Home Occupations as defined in Section 2.8 of this Ordinance
- H. Studio for professional work or instruction of any form of fine arts, music, drama and dance.

Section 9.3 Permitted Accessory Uses

- A. Any use customarily incidental to the permitted use.

Section 9.4 Uses Permitted by Special Land Use Permit

The following uses of land and structures may be permitted after a public hearing in accord with Section 17.2C by issuance of a Special Land Use Permit following procedures outlined in Article 17, providing all of the minimum conditions required for setback dimensions, area, height, bulk and placement regulations and off-street parking are met and providing all of the conditions cited herein are met:<sup>28</sup>

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<sup>28</sup> Paragraph amended by Ordinance 2009-1; Adopted December 8, 2009, Effective December 23, 2009

## **Section 9.4 Uses Permitted by Special Land Use Permit (continued)**

- A. Public parks, playgrounds and playfields
- B. Institutional uses for medical, health, and educational
- C. Public utility service buildings or regulator station
- D. Personal services and small retail businesses primarily serving the permitted uses.
- E. Clubs or lodges.
- F. Planned unit developments
- G. Rooming or boarding houses
- H. Funeral homes and mortuary establishments

### AREA, HEIGHT, BULK AND PLACEMENT REGULATIONS

For a one-family dwelling on a single lot, regulations for the R-1 District shall apply.

#### Section 9.5 Maximum Building Area

Coverage of lot including accessory buildings in percent of lot area: 35%

#### Section 9.6 Front Yard (See Article 5, Section 5.4)

Twenty-five (25) feet

#### Section 9.7 Side Yards

Least one - five (5) feet

#### Section 9.8 Side Yards

Total of two (2) - fifteen (15) feet

#### Section 9.9 Rear Yard

Thirty (30) feet

#### Section 9.10 Maximum Building Height<sup>29</sup>

A principal building, including its attached garage, may be two and one-half (2 1/2) stories to a maximum of 30 feet, an unattached garage may be only one story to a maximum of 16 feet, and all other accessory buildings may be only of one story to a maximum of 16 feet. A breezeway or covered walkway or structure between the principal building and a garage of even minimal length shall not qualify a garage as being attached for the purpose of increasing its allowed stories or height from that of an unattached garage.

#### Section 9.11 Minimum Lot Size for Two-Family and Multiple-Family Dwelling

Area in square feet shall be as required in Section 7.14 of the Schedule of Regulations in the R-1 District (7,200 square feet) plus the following area for each additional dwelling unit: One (1) bedroom - two thousand (2,000) square feet; two (2) bedrooms - two thousand nine hundred (2,900) square feet; three (3) bedrooms - three thousand four hundred (3,400) square feet.

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<sup>29</sup> Definition amended by Ordinance 2014-4, Adopted November 17, 2014, Effective December 1, 2014.

ARTICLE 10  
P-1 PARKING DISTRICT  
Schedule of Regulations

Section 10.1 Intent

The intent of this district is to provide specific location for public or private off-street parking, in those situations where it is in the public interest that parking be specifically so located. This public interest includes relief of traffic congestion, a balance between parking and commercial; land use and enhancing the intent of B-1 Districts.

Section 10.2 Uses Permitted by Right

- A. Off-street parking lots in accordance with Article 16.

Section 10.3 Permitted Accessory Uses

- A. Shelter building for attendant, not to exceed fifty (50) square feet in area or sixteen (16) feet in height.
- B. Signs in accordance with Section 15.4.
- C. Any use customarily incidental to the permitted principal use Area.

AREA, HEIGHT, BULK AND PLACEMENT REGULATIONS

The regulations of Article 16 shall apply.

ARTICLE 11  
B-1 BUSINESS DISTRICT  
Schedule of Regulations

Section 11.1 Intent

The intent of this district is to provide for, to encourage and to facilitate the development of sound and efficient retailing, parking, personal and business services. To achieve this end the regulations are so designed to exclude certain uses and activities which typically disrupt the functioning of a concentrated business district and which at the same time function better outside such district.

Section 11.2 Uses Permitted by Right

- A. Office building uses resulting from any of the following occupations: accounting, administration, architecture, clerical, drafting, executive, engineering, graphic arts, law, medicine, scholarly sales of writing provided that there shall be no display of any actual product for sale.
- B. Office and workshop of a decorator, dressmaker or tailor provided that the establishment does not employ more than five (5) persons at one time.
- C. Medical, dental and pharmaceutical laboratory
- D. Studio for professional work or instruction of any form of fine arts, music, drama and dance.
- E. Retail Stores: General merchandise stores, dry goods stores, variety stores, food stores, apparel and apparel accessory stores, furniture stores, home furnishing stores, household appliance stores, eating and drinking places, drug stores, proprietary stores, liquor stores, antique stores, book and stationery stores, sporting goods stores, bicycle shops, jewelry stores, florists, cigar stores, news dealers, cameras and photographic supply stores, hardware stores, paint and wallpaper stores, gift and souvenir shops, optical goods stores, luggage and leather goods stores, hobby and toy shops, religious goods stores, pet shops, radio and television stores, music stores, mail order houses and office equipment stores.
- F. Selected Services: Hotels, motels, banks, laundry and dry cleaning retail establishments, self-service laundry and dry cleaning establishments, beauty and barber shops, photographic studio, shoe repair and shoeshine shops, hat cleaning shops, pressing and altering and garment repair shops, motion picture theaters, repair shops and services for watch, clock, Jewelry, musical instruments, typewriter and printing shops.
- G. Showroom Uses: Passenger cars, trucks, farm equipment.
- H. Municipal, State or Federal Uses: Public utility building, telephone exchange building. Churches and religious educational facilities are prohibited.
- I. Conditions:
  - 1. Any use which serves a customer while in the automobile is prohibited as a principal use.
  - 2. All permitted principal uses must be completely enclosed in a building.
  - 3. Outdoor storage is prohibited.

### Section 11.3 Permitted Accessory Use

- A. Any use customarily incidental to the permitted principal use.
- B. Drive-in facilities or banking and package pickup are permitted only when accessory to a permitted principal use not being a drive-in type of facility.

### Section 11.4 Uses Permitted by Special Land Use Permit

The following uses of land and structures may be permitted after a public hearing in accord with Section 17.2C by issuance of a Special Land Use Permit following the procedures outlined in Article 17 providing all of the applicable conditions required for setback dimensions, area, height, bulk and placement regulations and off-street parking requirements are met:<sup>30</sup>

- A. Gasoline filling stations and car washes.
- B. Temporary outdoor uses such as displays, Christmas tree sales or other quasi-civic activities may be permitted on a temporary basis without a public hearing by the Board of Zoning Appeals, providing:
  - 1. That such permit shall not be issued for more than six (6) months.
  - 2. Said use can be adequately shown not to be injurious or detrimental to properties in the immediate vicinity.
- C. Other principal uses having the same general character as the permitted principal uses providing:
  - 1. The proposed use is located on a road designated as an arterial or collector in the City of Essexville Community Master Plan.
  - 2. The proposed use is designed, constructed, operated and maintained in harmony with adjacent land uses and zoning districts.
- D. Adult entertainment facilities and live entertainment of nude or semi-nude persons or sexual orientation provided the following standards are met:<sup>31</sup>
  - 1. No adult entertainment use shall be located within one thousand (1,000) feet of a church, school, public park, non-commercial public assembly facility or public office building.
  - 2. The proposed site is not adjacent to or within five hundred (500) feet of any residential area in the R-1 or R-O zoning district.
  - 3. The proposed site is not within one thousand (1,000) feet of any other adult entertainment use.
  - 4. Window displays, signs, decorative or structural elements of buildings shall not include or convey specific examples of actual adult uses, are limited to a single sign and all such displays shall be part of specific approvals for the use. Any alterations in the above media shall be approved by the City Planning Commission.
  - 5. The site layout, setbacks, structures and overall appearance and function of the use would be compatible with adjacent uses and meet the requirements called for in this Ordinance.

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<sup>30</sup> Paragraph amended by Ordinance 2009-1; Adopted December 8, 2009, Effective December 23, 2009

<sup>31</sup> Paragraph amended by Ordinance 2009-1; Adopted December 8, 2009, Effective December 23, 2009

E. Arcades and other places of amusement housing pinball machines, video games and other amusement devices providing that the following standards are met:

1. Possess a valid license for operation.
2. No person shall conduct, maintain display for use, operate or engage in business as an owner, operator, agent, employee, or in any other capacity in any establishment or place of business within the City where more than five (5) coin operated games and/or amusement devices are located therein without having secured a license to do so.
3. Before any license under this Section shall be granted, application shall be made to the City Council in writing on a form available from the City Clerk's office. The application shall state the name, age and address of the person or persons or firm, company or corporation. It shall state where the business is to be operated, the zoning of the property on which it is to be operated, the name and address and age of the person in charge or to operate the business, and the number and description of devices the applicant intends to operate.

Upon filing of the application herein described, the same shall be referred to the Chief of Public Safety and Building Inspector (including plumbing and electrical inspectors). These departments are to report the same to the said Commission with their recommendations. If, after investigation, the City Council shall determine that the applicant has complied with all of the requirements of this article, then the City Council may authorize the City Clerk to issue the applicant a license.

4. The annual license fee for a place of amusement shall be determined by the City Council and shall expire at midnight on June 30th of each year, whereupon a new application must be made.
5. Fees shall be paid by the applicant upon filing the application.
6. Any license issued under the provisions of this ordinance may be revoked by the City Council at any time that the City Council may deem or determine that the holder of the license has failed to comply with the requirements of the Special Land Use Permit or any other ordinances pertinent to the operation of business establishments.

Revocation shall be accomplished by a hearing held before the City Council upon a written complaint duly verified by one having knowledge of the facts upon which the complaint is based and by issuance of an order to show cause from the City Council directed to the licensee by certified mail and served upon the licensee along with a copy of said written complaint at least five (5) days before the date of hearing of the order requiring the licensee to show cause before the City Council in the City Hall at any hour therein designated, why the license should not be revoked. Any order revoking a license issued under this article shall be accompanied by written findings supporting such revocation.

7. Any person licensed by the City for operating or maintaining a "place of amusement" within the corporate limits of the City shall be restricted to the playing of any amusement therein or thereon between the hours of 3:00 P.M. and 9:00 P.M. each day except Friday and Saturday when the hours shall be extended to 10:00 P.M. Saturday opening may be earlier in the day.

8. Upon application or petition from the licensee, the City Council may suspend these restrictions on hours of operation for days that City schools are not in session. During all other hours, no persons other than the licensee or his agent shall be allowed in said place of amusement. The licensee or his agent shall be responsible for keeping the hours as set forth herein and may be penalized as provided for herein if he fails to do so.
  9. No operator shall install or permit the use of a mechanical or electronic amusement device which contains an automatic pay-off device for the return of slugs, money, coins, checks, tokens, discs or plates.
  10. No person under the age of seventeen (17) years, unless accompanied by a parent or guardian, shall play or operate any mechanical or electronic amusement device. No person, agent or operator in charge of said premises upon which an amusement device may be situated, shall permit any person less than seventeen (17) years of age to play or operate any such amusement device unless accompanied by parent or guardian.
  11. Nothing in this section shall in any way be construed to authorize, license or permit any gambling device whatsoever.
  12. The owner, his agent, operator or person in control of the premises shall have reached the age of twenty-one (21) years of age and shall be inside the premises at all times of operation. There shall be no loitering on said premises or around said premises and the conduct of said business shall in no way or manner disturb, destroy or disrupt any surrounding establishment, business or dwelling.
  13. The site layout, setbacks, structures and overall appearance and function of the use shall be compatible with B-1 Business District uses and meet the requirements called for in this district.
- F. An apartment for use as a residence in a building operated as a business within the district shall be allowed only under the following specific conditions:
1. The living area of the apartment shall be at least 800 sq. feet and shall not be occupied so that each person residing therein shall have less than 200 sq. feet of living space.
  2. The apartment shall be attached to or part of the primary building in which a business is normally operated.
  3. The apartment shall meet all building, construction and fire codes of the City.
  4. The apartment shall be occupied only by the owner of the building or lessee of the building in which the business is normally operated.
  5. An ongoing business must exist to allow occupancy of the apartment. If the business ceases to operate, the special land use permit shall end and the apartment must be vacated within 6 months.
  6. The business and residential areas must be maintained separately and no business activity inclusive of but not limited to storage of any inventory or servicing or maintenance of any product shall be allowed in the residential area.

7. A special land use permit shall not be issued if detrimental or hazardous conditions would exist to the occupants or others.
  8. Special use permits under this heading shall be issued for a period of one year and must be renewed annually by application of the occupants. There will be no fee charged for annual renewal.
- G. Special land uses permitted and as controlled in the R-O District except planned unit developments and rooming and boarding houses.<sup>32</sup>

#### AREA, HEIGHT, BULK AND PLACEMENT REGULATIONS

##### Section 11.5 Maximum Building Height and Setback

Three and one-half stories to a maximum of forty (40) feet.

No buildings shall be closer than twenty (20) feet to any residential district boundary.

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<sup>32</sup> Paragraph amended by Ordinance 2009-1; Adopted December 8, 2009, Effective December 23, 2009

## ARTICLE 11A

### BP — BUSINESS PARK<sup>33</sup> Schedule of Regulations

#### Section 11A.1 Intent

This District is intended for non-retail business uses that have few, if any, nuisance characteristics and other service establishments, which are of a type not generally requiring the customer to call at the place of business. The BP District is designed to permit processing, assembling, packaging or treatment of products from previously prepared materials. It is also intended to prohibit residential uses and retail enterprise as being incompatible with the primary business and related uses permitted.

It is the purpose of these regulations to promote sound non-retail business areas within the community which are also protected from incompatible uses.

#### Section 11A.2 Uses Permitted by Right

The following are the principal permitted uses by right within a BP District:

- A. Production, processing, assembling, packaging or treatment of such products as: bakery goods, candy, cosmetics, pharmaceuticals, toiletries, food products, hardware and cutlery, tool and die and sheet metal products.
- B. Production, processing, assembling, packaging or treatment of articles or products from the following previously prepared or semi-finished materials: bone, hair, fur, leather or feathers, fibers, plastics, glass or cellophane, wood, paper or cork, sheet metal or wire, tobacco, rubber, precious or semi-precious stones and similar articles or products which are previously prepared or semi-finished.
- C. High technology service use which has as its principal function the providing of services including computer information transfer, communication, distribution, management, processing, administrative, laboratory, experimental, developmental, technical or testing services.
- D. High technology industrial use, meaning a use which has as its principal function light manufacturing, assembly, fabrication or machining from processed materials including (but not limited to) uses devoted to agricultural technology, pharmaceutical research, software technology, defense and aerospace technologies or other technology oriented or emerging industrial or business activity not involving any heavy manufacturing, heavy stamping or any manufacturing from raw unprocessed materials.
- E. Research, development, engineering, design, assembly, fabrication and limited light manufacturing of high-technology equipment including equipment involved in any high technology industrial activity as defined above, instrumentation and associated computer software, engine product research, fluid transfer and handling product research, development, engineering, design, testing, assembly, production and related office, sales and administrative uses.
- F. Manufacturing of pottery and ceramics.
- G. Manufacturing of musical instruments, toys, novelties or other small molded products.

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<sup>33</sup> This article amended by Ordinance 2008-2 Adopted November 11, 2008, Effective December 2, 2008

- H. Manufacturing and assembly of electronic instruments and electrical appliances and devices.
- I. Laboratory and research facilities including experimental, film and testing.
- J. Trade, skill or vocational schools.
- K. Public utility and service installations and buildings including power, fuel, communications and water treatment.

#### Section 11A.3 Permitted Accessory Uses

Accessory uses that are clearly subordinate to the main building shall be permitted.

Such uses include:

- A. Restaurant or cafeteria facilities for employees.
- B. Office buildings associated with a manufacturing facility.
- C. Uses which can meet the requirements as herein specified or as defined in Article 2, Section 2.6.

#### Section 11A.4 Uses Permitted by Special Land Use Permit<sup>34</sup>

The following uses of land and structures may be permitted after a public hearing in accord with Section 17.2 C by issuance of a Special Land Use permit following the procedures outlined in Article 17, providing all of the applicable conditions for required setback dimensions, area, height, bulk and placement regulations an off-street parking are met and subject further to all requirements of this district:

##### A. Construction Services.

The following conditions shall apply:

1. All fabrication and assembly facilities shall be conducted within the confines of buildings.
2. Materials stored outside for a period longer than one-day shall be located within an enclosed area located at the rear or side of the building. The enclosed area shall not be located on any side of a building, which adjoins a public right-of-way. The enclosed area used for the outdoor storage of materials shall be constructed of a solid 8-foot high screen wall and the stored materials shall not exceed the height of the enclosure.
3. Any outside storage of materials other than licensed motor vehicles shall not exceed the height of the screening wall as provided under 2 above.
4. Required front yards of the facility shall not be fenced and shall be appropriately landscaped.

##### B. Medical Marihuana Dispensaries, if allowed by Michigan law.<sup>35</sup>

The following conditions shall apply:

1. Primary caregivers and/or qualified patients at the facility must be registered by the Michigan Department of Community Health (MDCH) to assist qualified patients with the medical use of marihuana in accordance with the Michigan

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<sup>34</sup> Section amended by Ordinance 2009-1; Adopted December 8, 2009, Effective December 23, 2009

<sup>35</sup> Section amended by Ordinance 2011-01; Adopted May 10, 2011, Effective May 25, 2011

Medical Marihuana Act, as amended. Such ability to operate shall be limited to those who are a registered primary caregiver, as defined by and in compliance with the General Rules of the Michigan Department of Community Health, Michigan Admin Code, R 333.101 through R 333.133 (the General Rules), the Michigan Medical Marihuana Act, PA 2008, Initiated Law, MCL 333.26421 *et seq* (the "Act") and the requirements of this subpart. Nothing in this subpart, or in any companion regulatory provision, adopted in any other provision of the city zoning or general ordinances is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marihuana not in strict compliance with that Act and the General Rules. Also, since Federal law is not affected by that Act or the General Rules, nothing in this subpart, or in any companion regulatory provision, adopted in any other provision of the city zoning or general ordinances is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under Federal law. The Act does not protect users, caregivers or owners of the properties on which the medical use of marihuana is occurring under the Federal Controlled Substances Act.

2. The facility shall not be allowed within 500 feet of a nursery school, child care center, another medical marihuana facility or medical marihuana grow operation, or an Article 7 single-family residential districts, and outside of a one-thousand (1,000) foot radius from any school, or library, as defined by the Michigan Public Health Code, 1978 PA 368, as amended MCL 333.7410, to insure community compliance with Federal "Drug-Free School Zone" requirements.
3. Any person operating a medical marihuana facility shall first obtain a license from the city prior to doing so by filing an application form developed by the City and which may require a fee as determined by the City Council. Such application shall document that the medical marihuana dispensary shall be conducted in accordance with the terms of this Part B of Section 11A.4.
4. The facility shall be available for inspection, during business hours, by the City Manager or the City Manager's designee to confirm the facility is operating in accordance with all applicable laws, including state law and city ordinances.
5. The grow operation shall open no earlier than 8:00 a.m. and close no later than 8:00 p.m., except staff may be at the operation necessary to attend to the grow operation.
6. The facility shall not be permitted to have drive-through facilities.
7. Smoking or consumption of medical marihuana shall not be allowed on the site of the facility.
8. All medical marihuana shall be grown and contained within a main building in an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only by the registered primary caregiver or qualifying patient, as reviewed and approved by the Building Official and the City of Essexville Department of Public Safety. A greenhouse as defined in this ordinance shall not be used to grow or store medical marihuana even if attached to or considered part of a main building. No medical marihuana shall be grown out of doors whether planted in the

ground or in containers temporarily placed upon or in the ground or any other surface.

9. A security plan and floor plan shall be submitted with applications for a facility as required by Section 17.2. The facility shall identify the number of plants, chemical storage, space and other critical aspects of the layout. The security and floor plan shall be a confidential document by the City exempt from disclosure under the Freedom of Information Act.
10. A waste disposal plan shall be included with all applications for a facility as required by Section 17.2 detailing plans for chemical disposal and plans for plant waste disposal.
11. The facility shall be in compliance with City's Fire Protection Code and shall be subject to inspection and approval by the city fire inspector.
12. The grow operation shall receive OSHA/MIOSHA certifications regarding safety of environment for facility's caregivers.
13. The grow operation shall obtain MDEQ and the city's waste water disposal system approval regarding discharge of growing by-products into the city sewer system.
14. The following shall be prohibited:
  - a. Storage of toxic, flammable or hazardous materials;
  - b. Discharge of any toxic, flammable or hazardous materials into the city sewer system;
  - c. Residential use of the main building or structure;
  - d. Outdoor storage;
  - e. Persons under the age of eighteen (18) years within the facility at any time with the exception of those in the presence of a qualifying patient or their primary caregiver;
  - f. Any persons, including patients or caregivers, who are not the licensee or employees within the facility before or after the allowed hours of operation;
  - g. Sales of drug paraphernalia;
  - h. The warehousing, growing, or storage of quantities of marihuana in excess of those amounts allowed by state law per qualifying patient for which the licensee of the facility is currently the caretaker.
15. Medical marihuana dispensaries shall not grow more than sixty (60) plants at any one time.
16. The medical use of marihuana shall comply at all times and in all circumstances with the Michigan Medical Marihuana Act and the General Rules of the Michigan Department of Community Health, as they may be amended from time to time.
17. The dispensary shall be operated in compliance with regulations the City may issue regarding security measures, record keeping, proper identification for patients, delivery of medical marihuana by employees of the medical marihuana dispensary to patients who would otherwise not be able to obtain it from a dispensary by reason of physical or mental disability, storage of

marihuana on the site, on-site cultivation and the maximum amount that may be dispensed in any single transaction. Such regulations may be modified from time to time as the City deems appropriate.

### **Section 11A.5 General Use Requirements**

- A. Enclosed Buildings: Activities in this District shall be carried on in completely enclosed buildings.

All outdoor storage shall be effectively screened by a solid, uniformly finished wall or fence with solid entrance and exit gates, which fence or wall shall be at least four (4) feet in height, but in no case shall the wall or fence exceed eight (8) feet in height. Such storage shall be deemed to include the parking of licensed motor vehicles over one and one half (1½) tons rated capacity.

- B. Retail sales and residential dwellings are expressly prohibited.
- C. Uses in this District shall conform to the following standards:
1. Emit no obnoxious, toxic or corrosive fumes, liquids or gases which are harmful to the public health, safety or general welfare, except those produced by internal combustion engines under design operating conditions.
  2. Emit no smoke, odorous gases or other odorous matter in such quantities as to be offensive at or beyond any boundary of the parcel.
  3. Produce no heat or glare to such an extent to be detrimental to the health, safety and general welfare at or beyond the lot boundaries.
  4. Produce no physical vibrations to such an extent to be determined detrimental to the health, safety and general welfare at or beyond the lot boundaries.
  5. Does not include in the manufacturing process any production or storage of any material designed for use as an explosive, nor in the use of any such material in production.
  6. Shall conform to all local, state and applicable federal pollution control standards, including noise, air and water quality requirements.

### SITE DEVELOPMENT STANDARDS

#### Section 11A.6 Application Procedure

- A. Intent: The exterior appearance of any building located within the BP District of the City has an effect upon the desirability of the immediate area and of neighboring areas for business and other purposes. Maintenance of an attractive, compatible and pleasing exterior appearance of such buildings will prevent impairment of the stability of the value of other real property in the area permit the most appropriate development of such area, and will prevent attendant deterioration of conditions affecting the general welfare of the citizens of Essexville.
- B. Scope of Application: Except for those items listed below, all plans submitted for Site Plan review shall be subject to design review requirements of this Section. Those items exempt from these provisions are:
1. Items such as gutters, downspouts, door and window replacement, antennas, roof vents, small mechanical equipment not readily visible to the public, painting to a similar color, and items of ordinary repair and maintenance.

- C. Approval Procedure: The Planning Commission shall review submitted material, concurrently with site plan review by the Planning Commission, when such is required. All approvals for site plans shall be conditioned upon a review and recommendation by Planning Commission.
- D. Information Required: The Planning Commission shall receive, and promptly review all drawings, data, plans, and specifications. This information shall include;
1. An application form, indicating:
    - (a) The names, addresses, and telephone number of the petitioner, property owner, and site designer.
    - (b) The general location of the subject parcel.
    - (c) A project description.
  2. A site plan, providing data as required.
  3. Elevation drawings of all sides of buildings visible to the public, showing general design treatment including color and materials of all walls, screens, towers, openings, and signs and the treatment to be utilized in concealing any exposed mechanical or electrical equipment.
  4. Description information, including, samples or swatches, indicating the color and texture of the buildings as they will appear following construction or renovation.
  5. Any other materials, drawings, and documents which may be helpful to, or requested by the Planning Commission.
- E. Design Criteria: In the process of reviewing the submitted materials, the Planning Commission shall use Area, Height, Bulk, and Placement Regulations found elsewhere in this Ordinance as a guide when reviewing the site plan for a particular use in the BP Zoning District and shall consider:
1. Relationship of Buildings to Site
    - (a) The site shall be planned to accomplish desirable transition, between the building(s) with the streetscape to provide for adequate planting, safe pedestrian movement, and parking areas.
    - (b) Site planning in which setbacks and yards are in excess of zoning restrictions is encouraged, where feasible, to provide an interesting relationship between buildings.
    - (c) Parking area shall be treated with decorative elements, building wall extensions, plantings, berms, or other innovative means so as to screen parking areas from view from public ways.
    - (d) Without restricting the permissible limits of the applicable zoning district the height and scale of each building shall be compatible with its site and existing (or anticipated) adjoining buildings.
    - (e) Newly installed utility services, and service revisions necessitated by exterior alterations, shall be underground.
  2. Building Design
    - (a) Buildings shall be good scale and be in harmonious conformance with permanent neighboring development.

(b) Materials shall have good architectural character and shall be selected for harmony of the buildings with adjoining buildings.

F. Approval Standards: The Planning Commission shall review the particular circumstance and facts applicable to each submittal in terms of the preceding design criteria, and shall make a recommendation as to whether the proposal meets the following standards:

1. The appearance, color, texture and materials being used will preserve property values in the immediate neighborhood and will not adversely affect any property values.
2. The appearance of the building exterior will not detract from the general harmony of and is compatible with other buildings already existing in the immediate neighborhood.
3. The appearance of the building exterior will not be garish or otherwise offensive to the sense of sight.
4. The appearance of the building exterior will tend to minimize or prevent discordant and unsightly surroundings in the immediate neighborhood.

#### Section 11A.7 Landscaping

A. Intent: Landscaping, greenbelts, and screening are necessary for the protection and enhancement of the environment and for the continued vitality of all land uses in the City. Landscaping and greenbelts are capable of enhancing the visual environment, preserving natural features, improving property values, and alleviating the impact of noise, traffic, and visual disruption related to intensive uses. Screening is important to protect less-intensive uses from the noise, light, traffic, litter and other impacts of intensive nonresidential uses.

### AREA, HEIGHT, BULK AND PLACEMENT REGULATIONS

#### Section 11A.8 Maximum Building Area

Coverage of lot including accessory buildings in percent of lot area: 35%

#### Section 11A.9 Front Yard Setback

Twenty-five (25) feet

#### Section 11A.10 Side Yard Setback

Each side yard shall be ten (10) feet

#### Section 11A.11 Maximum Building Height

Sixty (60) feet

#### Section 11A.12 Minimum Lot Size

Twelve thousand (12,000) square feet

#### Section 11A.13 Minimum Frontage

Each lot shall have a minimal frontage of one hundred (100) feet.

#### Section 11A.14 Required Open Space

Where a lot in this district abuts a lot in any residential district no building in the BP District shall be closer than one hundred (100) feet to the property line of such residential lot.

When the side or rear yard areas abut land within a residential district and when such yard areas are to be used for parking, loading, unloading, or servicing, then such side and rear yard area shall be effectively screened by a solid, uniformly finished wall or fence.

Such wall or fence shall be at least four (4) feet in height, but in no case shall the fence or wall be lower than the enclosed parking, loading or servicing activity to be screened.

Except for landscape improvements and necessary drives and walks, the front yard shall remain clear and shall not be used for parking, loading, and storage or accessory structures. Side and rear yards, except for a strip along the lot boundary ten (10) feet in width, may be used for parking and loading but not for storage. The side or rear yard may be eliminated where a railroad service to the site is obtained at the edge of the lot.

ARTICLE 12  
M-1 INDUSTRIAL (LIMITED MANUFACTURING)  
Schedule of Regulations

Section 12.1 Intent

This District is intended for light industrial uses with few, if any nuisance characteristics, but also permits commercial establishments not engaged in retail sales, and service establishments which are of a type not generally requiring the customer to call at the place of business. The M-1 District is designed to permit manufacturing, processing, assembling, packaging or treatment of products from previously prepared materials. It is also intended to prohibit residential uses and intensive retail enterprise as being incompatible with the primary industrial and related uses permitted; however, under "Special Use" provision certain retail and wholesale activities may be permitted.

It is the purpose of these regulations to promote sound industrial areas within the community which are also protected from incompatible uses.

Section 12.2 Uses Permitted by Right

The following are the principal permitted uses by right within an M-1 District:

- A. Production, processing, assembling, packaging or treatment of such products as: bakery goods, candy, cosmetics, pharmaceuticals, toiletries, food products, hardware and cutlery, tool and dye, garage products and sheet metal products.
- B. Production, processing, assembling, packaging or treatment of articles or products from the following previously prepared or semi-finished materials: bone, hair, fur, leather or feathers, fibers, plastics, glass or cellophane, wood, paper or cork, sheet metal or wire, tobacco, rubber, precious or semi-precious stones and similar articles or products which are previously prepared or semi-finished.
- C. Manufacturing of pottery and ceramics.
- D. Manufacturing of musical instruments, toys, novelties or other small molded products.
- E. Manufacturing and assembly of electronic instruments and electrical appliances and devices.
- F. Laboratories including experimental, film and testing.
- G. Trade, skills or vocational schools and veterinary hospitals or clinics.
- H. Public utility installations and buildings including power, fuel, communications and water treatment.
- I. Truck terminals and contractor's establishments.
- J. Warehouse and storage buildings and yards.
- K. Automobile and light truck service and repair including bodywork and painting

### Section 12.3 Permitted Accessory Uses

Accessory uses that are clearly subordinate to the main building shall be permitted. Such uses include:

- A. Restaurant or cafeteria facilities for employees.
- B. Caretaker's residence if situated upon a portion of the lot complying with all the requirements of the R-1 Residential District.
- C. Office buildings associated with a manufacturing facility.
- D. Uses which can meet the requirements as herein specified or as defined in Article 2, Section 2.6.

### Section 12.4 Uses Permitted by Special Land Use Permit

The following uses of land and structures may be permitted after a public hearing in accord with Section 17.2C in the M-1 District by the application for issuance of a Special Land Use Permit when all the provisional requirements specified in Article 17, together with all) applicable standards cited in this Article are met.<sup>36</sup>

- A. Restaurants, taverns and other eating establishments provided the following standards are met:
  1. The proposed use is designed, constructed, operated and maintained in harmony with land uses on-zoning districts.
- B. Junk yards provided the following standards are met:
  1. The site shall be a minimum of five (5) acres in size.
  2. An opaque fence or wall at least eight (8) feet in height shall be provided around the entire site and shall be of sound construction, painted and otherwise finished neatly and inconspicuously.
  3. There shall be no stacking of material above the height of the fence or wall, except for movable equipment used on the site.
  4. No equipment materials, signs or lighting shall be used or stored outside the fenced area.
  5. All fenced-in area shall be at least fifty (50) feet from any front street or property line. Such front yard setback shall be planted with trees, grass and shrubs to minimize the appearance of the installation.
  6. No open burning shall be permitted and all industrial processes involving the use of equipment for cutting, compressing or packaging shall be conducted within an enclosed building.
  7. Whenever the installation abuts upon property within a residential or office district, a transition strip at least one hundred (100) feet in width shall be provided between the fenced-in area and the adjacent district. Such a strip shall contain plant materials, grass and structural screens of a type approved by the Board of Zoning Appeals to effectively minimize the appearance of the installation.

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<sup>36</sup> Paragraph amended by Ordinance 2009-1 Adopted December 8, 2009, Effective December 23, 2009

## Section 12.5 General Use Requirements

- A. Enclosed Buildings: Activities in this District shall be carried on in completely enclosed buildings. Storage may be permitted out-of-doors PROVIDED that within two hundred (200) feet of any other district said storage shall be in completely enclosed buildings.

All outdoor storage shall be effectively screened by a solid, uniformly finished wall or fence with solid entrance and exit gates, which fence or wall shall be at least four (4) feet in height, but in no case shall the wall or fence exceed eight (8) feet in height. Such storage shall be deemed to include the parking of licensed motor vehicles over one and one half (1½) tons rated capacity.

- B. Retail sales and residential dwellings are expressly prohibited.

- C. Uses in this District shall conform to the following standards:

1. Emit no obnoxious, toxic or corrosive fumes or gases which are harmful to the public health, safety or general welfare, except those produced by internal combustion engines under design operating conditions.
2. Emit no smoke, odorous gases or other odorous matter in such quantities as to be offensive at or beyond any boundary of the parcel.
3. Produce no heat or glare to such an extent to be detrimental to the health, safety and general welfare at or beyond the lot boundaries.
4. Produce no physical vibrations to such an extent to be determined detrimental to the health, safety and general welfare at or beyond the lot boundaries.
5. Does not include in the manufacturing process any production or storage of any material designed for use as an explosive, nor in the use of any such material in production.
6. Shall conform to all local, state and applicable federal pollution control standards, including noise, air and water quality requirements.

### AREA, HEIGHT, BULK AND PLACEMENT REGULATIONS

#### Section 12.6 Maximum Building Area

Coverage of lot including accessory buildings in percent of lot area: 35%

#### Section 12.7 Front Yard

Twenty-five (25) feet

#### Section 12.8 Side Yards

Each side yard shall be ten (10) feet

#### Section 12.9 Maximum Building Height

Sixty (60) feet

#### Section 12.10 Minimum Lot Size

Twelve thousand (12,000) square feet

#### Section 12.11 Minimum Frontage

Each lot shall have a minimal frontage of one hundred (100) feet. Where a lot in this district abuts a lot in any residential district no building in the M-1 District shall be closer than one hundred (100) feet to the property line of such residential lot.

When the side or rear yard areas abut land within a residential district and when such yard areas are to be used for parking, loading, unloading, or servicing, then such side and rear yard area shall be effectively screened by a solid, uniformly finished wall or fence. Such wall or fence shall be at least four (4) feet in height, but in no case shall the fence or wall be lower than the enclosed parking, loading or servicing activity to be screened.

Except for landscape improvements and necessary drives and walks, the front yard shall remain clear and shall not be used for parking, loading, and storage or accessory structures. Side and rear yards, except for a strip along the lot boundary ten (10) feet in width, may be used for parking and loading but not for storage. The side or rear yard may be eliminated where a railroad service to the site is obtained at the edge of the lot.

ARTICLE 13  
M-2 INDUSTRIAL (INTENSIVE MANUFACTURING)  
Schedule of Regulations

Section 13.1 Intent

This District is intended for intensive industrial uses but also permits light industrial and commercial establishments not engaged in retail sales and service establishments which are of a type not generally requiring the customer to call at the place of business. The M-2 District is designed to permit the manufacturing, processing or assembling of semi-finished or finished products from raw material as previously prepared. It is also intended to prohibit residential uses and intensive retail enterprise as being incompatible with the primary industrial and related uses permitted.

It is the purpose of these regulations to promote sound industrial areas within the community which are also protected from incompatible uses.

Section 13.2 Uses Permitted by Right

The following are the principal permitted uses by right within an M-2 District:

- A. Production, processing, assembling, packaging or treatment of such products as: bakery goods, candy, cosmetics, pharmaceuticals, toiletries, food products, hardware and cutlery, tool and dye, garage products and sheet metal products.
- B. Production, processing, assembling, packaging or treatment of articles or products from the following previously prepared or semi-finished materials: bone, hair, fur, leather or feathers, fibers, plastics, glass or cellophane, wood, paper or cork, sheet metal or wire, tobacco, rubber, precious or semi-precious stones and similar articles or products which are previously prepared or semi-finished.
- C. Manufacturing of pottery and ceramics.
- D. Manufacturing of musical instruments, toys, novelties or other small molded products.
- E. Manufacturing and assembly of electronic instruments and electrical appliances and devices.
- F. Laboratories including experimental, film and testing.
- G. Trade, skills or vocational schools and veterinary hospitals or clinics.
- H. Public utility installations and buildings including power, fuel, communications and water treatment.
- I. Truck terminals and contractor's establishments.
- J. Warehouse and storage buildings and yards.
- K. Automobile and light truck service and repair including bodywork and painting
- L. Restaurants, taverns and other eating establishments provided the following standards are met:
  - 1. The proposed use is designed, constructed, operated and maintained in harmony with land uses in the zoning district.

M. Junk yards provided the following standards are met:

1. The site shall be a minimum of five (5) acres in size.
2. An opaque fence or wall at least eight (8) feet in height shall be provided around the entire site and shall be of sound construction, painted and otherwise finished neatly and inconspicuously.
3. There shall be no stacking of material above the height of the fence or wall, except for movable equipment used on the site.
4. No equipment materials, signs or lighting shall be used or stored outside the fenced area.
5. All fenced-in area shall be at least fifty (50) feet from any front street or property line. Such front yard setback shall be planted with trees, grass and shrubs to minimize the appearance of the installation.
6. No open burning shall be permitted and all industrial processes involving the use of equipment for cutting, compressing or packaging shall be conducted within an enclosed building.
7. Whenever the installation abuts upon property within a residential or office district, a transition strip at least one hundred (100) feet in width shall be provided between the fenced-in area and the adjacent district. Such a strip shall contain plant materials, grass and structural screens of a type approved by the Board of Zoning Appeals to effectively minimize the appearance of the installation.

N. Heating and electric power generating plants.

O. Any manufacturing, processing, testing, assembling, storage and distribution of materials, goods, foodstuffs and other semi-finished or finished products from raw materials.

P. Heavy metals processing and production such as in foundries, casting plants and other similar production.

Q. Sewage treatment and disposal installations.

R. Donation boxes as defined by this code.<sup>37</sup>

### Section 13.3 Permitted Accessory Use

Accessory uses that are clearly subordinate to the main building shall be permitted.

Such uses include:

- A. Restaurant or cafeteria facilities for employees.
- B. Caretaker's residence if situated upon a portion of the lot complying with all the requirements of the R-I Residential District.
- C. Office buildings associated with a manufacturing facility.
- D. Uses which can meet the requirements as herein specified or as defined in Article 2, Section 2.6.

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<sup>37</sup> Definition added by Ordinance 2013-2 adopted August 13, 2013 effective August 28, 2013.

#### Section 13.4 Uses Permitted by Special Land Use Permit

The following uses of land and structures may be permitted after a public hearing in accord with Section 17.2C in the M-2 District by the application for issuance of a Special Land Use Permit when all the procedural requirements specified in Article 17, together with all applicable standards cited below are met.<sup>38</sup>

- A. Hazardous material disposal, reprocessing plants, resource recovery facilities or incinerators.
  1. All uses shall be established and maintained in accordance with all applicable State of Michigan statutes. If any of the requirements of this subsection are less than those in applicable State statutes, the State requirements shall prevail.
  2. All uses shall be enclosed by a fence six (6) feet or more in height for the entire periphery of the property. Fences shall be adequate to prevent trespass.
  3. All areas within any single development shall be rehabilitated progressively as they are worked out or abandoned so that they shall be in a condition of being entirely lacking in hazards inconspicuous and blended with the general surrounding ground form.
  4. The Planning Commission shall establish routes for truck movement in and out of the development.
  5. All permitted installations shall be maintained in a neat, orderly condition so as to prevent injury to any single individual, or to the community in general.
- B. Marine terminal uses for the transport, by water, of bulk, non-bulk containerized and specialized cargo provided that the following standards are met:
  1. All uses shall be enclosed by a fence six (6) feet or more in height for the entire periphery of the property. Fences shall be adequate to prevent trespass.
  2. Water and pump-out facilities shall be provided for vessels that are utilizing the marine terminal,
  3. Ingress and egress roads for the facility shall be designed to withstand the anticipated traffic and shall be paved.
  4. All permitted uses shall be maintained in a neat, orderly condition so as to prevent injury to any single property and individual or to the community in general.
  5. Tarps or covers will be provided for those bulk materials that are to be stored and are subject to wind or water erosion.
  6. Storm water drainage shall be contained on-site and provided with adequate treatment prior to discharge to the Saginaw River or the Essexville storm water system.
  7. All dimensional requirements of the M-2 District shall be met.

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<sup>38</sup> Paragraph amended by Ordinance 2009-1 Adopted December 8, 2009, Effective December 23, 2009

## Section 13.5 General Use Requirements

- A. Enclosed Buildings: Activities in this district shall be carried on in completely enclosed buildings with the exception of poles and towers for utility facilities. Storage may be permitted out-of-doors PROVIDED that within three hundred (300) feet of any other district said storage shall be in completely enclosed buildings.

All outdoor storage shall be effectively screened by a solid uniformly finished wall or fence with a solid entrance and exit gate, which fence or wall shall be at least four (4) feet in height, but in no case shall the fence be lower than the enclosed storage, up to a maximum height of eight (8) feet. Such storage shall be deemed to include the parking of licensed motor vehicles over one and one-half (1½) tons rated capacity.<sup>39</sup>

- B. Retail sales are expressly prohibited except as herein (Article 13) specifically allowed.
- C. Uses in this district shall conform to the following standards:
1. Emit no obnoxious, toxic or corrosive fumes or gases which are harmful to the public health, safety or general welfare, except those produced in internal combustion engines under design operating conditions.
  2. Emit no smoke, odorous gases or other odorous matter in such quantities as to be offensive at or beyond any boundary of the parcel.
  3. Produce no heat or glare to such an extent to be detrimental to the health, safety and general welfare at or beyond the lot boundaries.
  4. Produce no physical vibrations to such an extent to be determined detrimental to the health, safety and general welfare at or beyond the lot boundaries.
  5. Does not include in the manufacturing process any production or storage of any material designed for use as an explosive, nor in the use of any such material in production.
  6. Shall conform to all local, state and applicable federal pollution control standards including noise, air and water quality requirements.

### AREA, HEIGHT, BULK AND PLACEMENT REGULATIONS

#### Section 13.6 Maximum Building Area

Coverage of lot including accessory buildings in percent of lot area: 60%

#### Section 13.7 Front Yard

Twenty-five (25) feet from the front property line

#### Section 13.8 Side and Rear Yards

Side and rear yards shall be ten (10%) percent of the lot width and depth respectively but need not exceed thirty (30) feet each.

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<sup>39</sup> Paragraph amended by Ordinance 2009-1 Adopted December 8, 2009, Effective December 23, 2009

### Section 13.9 Maximum Building Height

Sixty (60) feet

### Section 13.10 Minimum Lot Size

Fifteen thousand (15,000) square feet

### Section 13.11 Minimum Frontage

Each lot shall have a minimal frontage of one hundred (100) feet. Where a lot in this District abuts a lot in any residential district, no building in the M-2 District shall be closer than one hundred (100) feet to the property line of such residential lot. When the side or rear yard areas abut land within a residential district and when such yard areas are to be used for parking, loading, unloading or servicing, then such side and rear yard areas shall be effectively screened by a solid, uniformly finished wall or fence. Such wall or fence shall be at least four (4) feet in height, but in no case shall the fence or wall be lower than the enclosed parking, loading or servicing activity to be screened.

Except for landscape improvements and necessary drives and walks, the front yard shall remain clear and shall not be used for parking, loading, and storage or accessory structures. Side and rear yards, except for a strip along the lot boundary ten (10) feet in width, may be used for parking and loading but not for storage. The side or rear yard may be eliminated where a railroad service to the site is obtained at the edge of the lot.

ARTICLE 14  
D-1 DEVELOPMENT DISTRICT  
Schedule of Regulations

Section 14.1 Intent

The intent of this District is to provide for flexibility in developing areas of open space that have been identified in the City of Essexville Comprehensive Plan as having the potential for alternative developments that include recreational-environmental uses, intensive residential uses and industrial uses. To achieve this end, regulations are so designed to maintain these districts in open space land uses until such time as the type of development proposed for these land areas can be ascertained and requested by a Special Land Use Permit. Once committed to development, all subsequent development in the district shall be harmonious.

Section 14.2 Uses Permitted by Right

- A. General farming and forestry including field crop and fruit farming, truck gardening, horticulture, tree nurseries and similar agricultural activities.
- B. Public and private conservation areas and structures for the conservation of water, soil, open space, forest or wildlife resources.
- C. Public and private parks and recreational facilities that utilize environmental or natural resource conditions as a basis for recreation.

Section 14.3 Permitted Accessory Uses

- A. Any use customarily incidental to the permitted principal use.

Section 14.4 Uses Permitted by Special Land Use Permit

The following uses of land and structures may be permitted after a public hearing in accord with Section 17.2C in the D-1 District by application for the issuance of a Special Land Use Permit when all the procedural requirements in Article 17 and all applicable standards are met.<sup>40</sup>

- A. Planned unit developments.
- B. Mobile home park developments, providing all of the following conditions are met:
  - 1. The proposed site shall have a minimum of twenty (20) acres.
  - 2. The site is in a location designated as suitable for a mobile home park in the City of Essexville Community Master Plan.
  - 3. The gross density of the site shall not exceed eight (8) units - acre.
  - 4. Any retail or service care providing neighborhood services or trade for the park shall not exceed two (2) acres and shall not be visible from adjacent areas.
  - 5. A minimum landscaped yard of fifty (50) feet shall be maintained on all common boundaries with other residential districts.
  - 6. A site plan is approved pursuant to Article 6, Section 6.1.

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<sup>40</sup> Paragraph amended by Ordinance 2009-1 Adopted December 8, 2009, Effective December 23, 2009

- C. Townhouses, apartments and condominiums not exceeding eight (8) units - acre, providing the following-standards are met:
1. Such land use has direct access onto a street identified as a collector or arterial in the City of Essexville Community Master Plan.
  2. Structures do not exceed two (2) stories or thirty (30) feet in height.
  3. There shall be a minimum yard of fifty (50) feet from any structure to any adjacent R-1 or R-O zoning district.
  4. The project site or lot includes at least two (2) acres.
  5. No more than thirty-five (35%) percent of the lot or project site may be covered by all buildings.
  6. A site plan is approved pursuant to Article 6, Section 6.1.
- D. Wholesale and warehouse distribution facilities, providing the following standards are met:
1. Each lot size shall be a minimum of twelve thousand (12,000) square feet.
  2. The proposed use is designed, constructed, operated and maintained in harmony with adjacent land uses or zoning districts.
  3. Whenever the installation abuts upon property within a residential district, a transitional strip at least one hundred (100) feet in width shall be provided between the facility and the residential district. Such a strip shall contain trees and grass as a buffer to the adjacent residential district.
  4. All applicable area, height, bulk and placement regulations of the M-1 District are met.
- E. Light Industrial establishments involved in the manufacturing, processing, testing, assembling, storage and distribution of materials, goods, foodstuffs and other semi-finished or finished materials, providing the following standards are met:<sup>41</sup>
1. Each lot shall contain a minimum of fifteen thousand (15,000) square feet.
  2. The site is not adjacent to an existing residential district.
  3. All applicable area, height, bulk and placement regulations of the M-2 District are met.
  4. All general use requirements of the M-2 District shall be met.

AREA, HEIGHT, BULK AND PLACEMENT REGULATIONS

Section 14.5 Minimum Lot Size

Area in acres - Two (2) acres

Section 14.6 Minimum Lot Size

Width - Three hundred (300) feet

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<sup>41</sup> Paragraph amended by Ordinance 2009-1 Adopted December 8, 2009, Effective December 23, 2009

ARTICLE 14A  
MU MIXED USE DISTRICT  
Schedule of Regulations

Section 14A.1 Intent

It is the intent of this district to provide for a transition area between Waterfront Industrial and Residential which allows for a combination of retail, professional office, and residential development subject to the site development standards outlined in this Article.

Section 14A.2 Uses Permitted by Right

- A. Eating and drinking establishments excluding drive-in facilities.
- B. Office buildings, retail establishments allowed in retail business, professional office residential areas excluding dining and restaurant drive-in facilities.
- C. Upper-story residential units including apartments and condominiums.

Section 14A.3 Permitted Accessory Use

- A. Any use customarily incidental to the permitted principal use.

Section 14A.4 Uses Permitted by Special Land Use Permit

The following uses of land and structures may be permitted after a public hearing in accord with Section 17.2C by issuance of a special land use permit following the procedures outlined in Article 17, providing all of the applicable conditions required for setback dimensions, area, height, bulk and placement regulations and off street parking are met, including the approval of a site plan, floor plans and building elevations by the Planning Commission:<sup>42</sup>

- A. Personal services and small retail businesses primarily serving the permitted uses.
- B. Multi-family dwellings including; Townhouses, apartments and condominiums.
- C. Light industrial uses

SITE DEVELOPMENT STANDARDS

Section 14A.5 Application Procedure

- A. Intent: The exterior appearance of any building located within the Mixed Use Zoning District of the City has an effect upon the desirability of the immediate area and of neighboring areas for business and other purposes. Maintenance of an attractive, compatible and pleasing exterior appearance of such buildings will prevent impairment of the stability of the value of other real property in the area permit the most appropriate development of such area, and will prevent attendant deterioration of conditions affecting the general welfare of the citizens of Essexville.

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<sup>42</sup> Paragraph amended by Ordinance 2009-1 Adopted December 8, 2009, Effective December 23, 2009

- B. Scope of Application: Except for those items listed below, all plans submitted for Site Plan review shall be subject to design review requirements of this Section. Those items exempt from these provisions are:
1. Items such as gutters, downspouts, door and window replacement, antennas, roof vents, small mechanical equipment not readily visible to the public, painting to a similar color, and items of ordinary repair and maintenance.
- C. Approval Procedure: The Planning Commission shall review submitted material, concurrently with site plan review by the Planning Commission, when such is required. All approvals for site plans shall be conditioned upon a review and recommendation by Planning Commission.
- D. Information Required: The Planning Commission shall receive, and promptly review all drawings, data, plans, and specifications. This information shall include;
1. An application form, indicating:
    - (a) The names, addresses, and telephone number of the petitioner, property owner, and site designer.
    - (b) The general location of the subject parcel.
    - (c) A project description.
  2. A site plan, providing data as required.
  3. Elevation drawings of all sides of buildings visible to the public, showing general design treatment including color and materials of all walls, screens, towers, openings, and signs and the treatment to be utilized in concealing any exposed mechanical or electrical equipment.
  4. Description information, including, samples or swatches, indicating the color and texture of the buildings as they will appear following construction or renovation.
  5. Any other materials, drawings, and documents which may be helpful to, or requested by the Planning Commission.
- E. Design Criteria: In the process of reviewing the submitted materials, the Planning Commission shall use Area, Height, Bulk, and Placement Regulations found elsewhere in this Ordinance as a guide when reviewing the site plan for a particular use in the Mixed Use Zoning District and shall consider:
1. Relationship of Buildings to Site:
    - (a) The site shall be planned to accomplish desirable transition, between the building(s) with the streetscape to provide for adequate planting, safe pedestrian movement, and parking areas.
    - (b) Site planning in which setbacks and yards are in excess of zoning restrictions is encouraged, where feasible, to provide an interesting relationship between buildings.
    - (c) Parking area shall be treated with decorative elements, building wall extensions, plantings, berms, or other innovative means so as to screen parking areas from view from public ways.

- (d) Without restricting the permissible limits of the applicable zoning district the height and scale of each building shall be compatible with its site and existing (or anticipated) adjoining buildings.
- (e) Newly installed utility services, and service revisions necessitated by exterior alterations, shall be underground.

2. Building Design:

- (a) Buildings shall be good scale and be in harmonious conformance with permanent neighboring development.
- (b) Materials shall have good architectural character and shall be selected for harmony of the buildings with adjoining buildings.

F. Approval Standards: The Planning Commission shall review the particular circumstance and facts applicable to each submittal in terms of the preceding design criteria, and shall make a recommendation as to whether the proposal meets the following standards:

- 1. The appearance, color, texture and materials being used will preserve property values in the immediate neighborhood and will not adversely affect any property values.
- 2. The appearance of the building exterior will not detract from the general harmony of and is compatible with other buildings already existing in the immediate neighborhood.
- 3. The appearance of the building exterior will not be garish or otherwise offensive to the sense of sight.
- 4. The appearance of the building exterior will tend to minimize or prevent discordant and unsightly surroundings in the immediate neighborhood.

Section 14A.6 Landscaping

A. Intent: Landscaping, greenbelts, and screening are necessary for the protection and enhancement of the environment and for the continued vitality of all land uses in the City. Landscaping and greenbelts are capable of enhancing the visual environment, preserving natural features, improving property values, and alleviating the impact of noise, traffic, and visual disruption related to intensive uses. Screening is important to protect less-intensive uses from the noise, light, traffic, litter and other impacts of intensive nonresidential uses. The purpose of this section is to set minimum standards for the protection and enhancement of the environment through requirements for the design and use of landscaping, greenbelts, and screening

1. Plant Material Spacing:

- (a) Plant materials shall not be placed closer than four (4) feet from the fence line or property line.
- (b) Where plant materials are planted in two (2) or more rows, plantings shall be staggered in rows.
- (c) Evergreen trees shall be planted not more than thirty (30) feet on centers.

- (d) Narrow evergreens shall be planted not more than three (3) feet on centers
- (e) Deciduous trees shall be planted not more than thirty (30) feet on centers.
- (f) Tree-like shrubs shall be planted not more than ten (10) feet on centers.
- (g) Large deciduous shrubs shall be planted not more than four (4) feet on centers.

2. Plant Material Size

- (a) Unless otherwise specified deciduous trees shall have a caliper of 2½" to 3"
- (b) Unless otherwise specified evergreen trees shall have a caliper of 2½" to 4".

3. Trees Not Permitted:

- (a) Box Elder
- (b) Soft Maples (Red-Silver)
- (c) Slippery Elms
- (d) Poplars
- (e) Willows
- (f) Horse Chestnut (nut bearing)
- (g) Tree of Heaven
- (h) Catalpa
- (i) Ash<sup>43</sup>

B. Scope of Application: The requirements set forth in this section shall apply to all uses, lots, sites, and parcels which are developed or expanded following the effective date of this Ordinance. No site plan shall be approved unless said site plan shows landscaping consistent with the provisions of this section. Furthermore, where landscaping is required, a building permit shall not be issued until the required landscape plan is submitted and approved, and a certificate of occupancy shall not be issued unless provisions set forth in this section have been met or a performance bond has been posted in accordance with the provisions set forth in the Site Plan Review section.

In cases where the use of an existing building changes or an existing building is changed or otherwise altered or reoccupied, all of the standards set forth herein shall be met.

The requirements of this section are minimum requirements, and nothing herein shall preclude a developer and the City from agreeing to more extensive landscaping.

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<sup>43</sup> Definition added by Ordinance 2009-1 Adopted December 8, 2009, Effective December 23, 2009

C. Landscaping Design Standards: Except as otherwise specified in the general requirements for each Zoning District, all landscaping shall conform to the following standards:

1. General Landscaping All portions of the lot or parcel area not covered by buildings, paving, or other Impervious surfaces shall be landscaped with vegetative ground cover and other plant material, except where specific landscape elements, such as a greenbelt, berms, or screening are required:
  - (a) All portions of the landscaped area shall be planted with grass, ground cover, shrubbery, or other suitable plant material, except that paved patios, terraces, sidewalks and similar site features may be incorporated with Planning Commission approval.
  - (b) A mixture of evergreen and deciduous trees shall be planted at the rate of one (1) tree for each three thousand (3,000) square feet or portion thereof of landscaped open-space area.
  - (c) Required trees and shrubs may be planted at uniform intervals' at random, or in groupings.
  - (d) In consideration of the overall design and impact of the landscape plan, the Planning Commission may reduce or waive the requirements outlined herein for general landscaping, or for landscaping in greenbelt areas, on berms, or as part of a screen, provided that any such adjustment is In keeping with the intent of the Ordinance.
  - (e) The total landscaped area shall be the basis for determining the required number of trees or shrubs, irrespective of the portion which is devoted to patios, terraces, sidewalks' or other site features.
2. Greenbelt Buffer: Where required, greenbelts and greenbelt buffers shall conform to the following standards:
  - (a) A required greenbelt or greenbelt buffer may be interrupted only to provide for roads or driveways for vehicular access.
  - (b) Grass, around cover, or other suitable live plant material shall be planted over the entire greenbelt area, except that paving may be used in areas of intensive pedestrian circulation.
  - (c) A minimum of one (1) deciduous tree or evergreen tree shall be planted for each thirty (30) linear feet or portion thereof of required greenbelt length. Required trees may be planted at uniform intervals, at random, or in groupings.
  - (d) For the purpose of determining required plant material, required greenbelt areas length shall be measured along the exterior periphery of the greenbelt area.

3. Berms: Where required, earth berms or landscaped berms shall conform to the following standards:
  - (a) The berm shall be at least three (3) feet above the grade elevation, and shall be constructed with slopes no steeper than one (1) foot vertical for each four (4) feet horizontal with at least a two (2) foot flat area on the top.
  - (b) For the purposes of this provision, grade elevation shall be the ground elevation at the property line adjacent to the proposed berm.
  - (c) The berm area shall be planted with grass or other suitable ground cover to ensure that it withstands wind and weather and retains its height and shape.
  - (d) A minimum of one (1) deciduous or evergreen tree shall be planted for each thirty (30) linear feet or portion of required berm.
  - (e) Eight (8) shrubs per tree may be planted as substitute for trees required in Item (3) above.
  - (f) Required trees and shrubs may be planted at uniform intervals, at random, or in groupings.
  - (g) For the purpose of determining required plant material, required berm length shall be measured along the exterior periphery of the berm.
4. Parking Lot Landscaping: Off-street parking areas shall be landscaped as follows:
  - (a) In off-street parking areas containing greater than twenty (20) spaces, an area equal to at least five (5) percent of the total parking area shall be used for interior landscaping. Whenever possible, parking lot landscaping shall be arranged to improve the safety of pedestrian and vehicular traffic, guide traffic movement, and improve the appearance of the parking area through the even distribution of the landscaped effort across the total off-street parking area, rather than to concentrate all efforts in one location
  - (b) Parking lot landscaping shall be not less than five (5) feet in any single dimension and no less than one hundred fifty (150) square feet in any single area. Not more than two (2) landscaped units of one hundred fifty (150) square feet may be combined in plans designed to meet the minimum requirements.
  - (c) The landscape plan shall designate the sizes, quantities, and types of plant material to be used in parking lot landscaping.
  - (d) Required landscaping elsewhere on the parcel shall not be counted in meeting the parking lot landscaping requirements.
  - (e) A minimum of one (1) deciduous tree shall be planted in each landscaped area.

- (f) The parking interior landscaping area shall be curbed and shall contain grass, ground cover, four (4) inch deep wood chips, or four (4) inch deep crushed stone.

To encourage parking lot median planting within parking lots (not along with public right-of-way) the front of a vehicle may encroach upon any interior landscaped area when said area is at least three and one-half (3½) feet in depth per abutting parking space and protected by permanently mounted wheel stops or curbing. Two (2) feet of said landscaped area may then be considered a part of the required depth of each abutting parking space.

- 5. Evergreen Screening: Where required, evergreen screening shall consist of closely-spaced plantings which form a complete visual barrier that is at least six (6) feet above ground level within five (5) years of planting.

D. Landscaping of Rights-of-Way and Other Adjacent Public Open-Space Areas: Public rights-of-way and other public open-space areas adjacent to required landscaped areas and greenbelts shall be planted with grass or other suitable ground cover and maintained by the owner of the adjacent property as if they were part of required landscaped areas and greenbelts.

E. Regulations Pertaining to Landscaping, Areas Used for Sight Distance: When a driveway intersects a public right-of-way or when the subject property abuts the intersection of public rights-of-way, all landscaping within the corner triangular areas described below shall permit unobstructed cross-visibility. Shrubs located in the triangular area shall not be permitted to grow to a height of more than thirty (30) inches above the pavement grade at the edge of the pavement. Portions of required berms located within sight distance triangular areas shall not exceed a height of thirty (30) inches above the pavement grade at the edge of the pavement. Trees may be maintained in this area provided that all branches are trimmed to maintain a clear vision for a vertical height of eight (8) feet above the roadway surface. Landscaping, except grass or ground cover, shall not be located closer than three (3) feet from the edge of a driveway.

F. Existing Landscaping on Site: In instances where healthy plant material exists on a site prior to its development, the Zoning Inspector may adjust the application of the above standards to allow credit for such plant material if such an adjustment is in keeping with, and will preserve the intent of this section.

All existing plant materials must first be inspected by the Zoning Inspector to determine the health and desirability of such materials. In the event plant materials are to be saved; prior approval must be obtained for the Zoning Inspector before any limb removal, root pruning, or other work is done.

If such existing plant material is labeled To Be Saved on site plans, protective techniques, such as (but not limited to) fencing or boards placed at the drip-line around the perimeter of the plant material, shall be installed. No vehicle or other construction equipment shall be parked or stored within the drip-line of any plant material intended to be saved.

In the event that healthy trees labeled To Be Saved on the approved site plan are destroyed or damaged, as determined by the zoning Inspector, the owner, developer, or contractor shall replace said trees with trees of comparable type.

G. Maintenance of Landscaping: All required landscape areas in multiple family, business, and industrial districts, shall be continuously maintained in a livable

condition. All landscaping which is located more than fifty (50) feet from a building site shall have an irrigation (water sprinkler) system installed to assist in maintaining plant materials in a healthy condition. Failure to maintain required landscaped areas, including the removal and replacement of dead or diseased plant materials, shall constitute a violation of this Ordinance.

- H. Plant Materials: Whenever in this Ordinance planting is required, it shall be planted within six (6) months from the date of completion of the building or improvement, and shall thereafter be reasonably maintained with permanent plant materials. Plastic or other non-organic, non-living plant materials shall be prohibited from use and shall not be in compliance with the spirit and intent of this Ordinance.

ARTICLE 15  
SUPPLEMENTARY REGULATIONS

Section 15.1 Visibility on Corner Lots

No structure, fence or planting shall be maintained in a required front open space within twenty-five (25) feet of the intersection of the street lot lines of a corner lot in a manner which would interfere with traffic visibility across a corner.

Section 15.2 Required Access

No dwelling unit shall be built on a lot unless the lot is fronting upon a street.

Section 15.3 Essential Services

Essential services shall be permitted as authorized and regulated by law and other ordinances of the City of Essexville. The intention hereof is to exempt such essential services from the application of this Ordinance.

Section 15.4 Signs, General

No sign shall project more than twelve (12) inches into or be placed within the right-of-way of a street, except where permanently attached to a legally permitted marquee.

There shall be no flashing or intermittent or red or blue or green illumination on any sign located in the same line of vision as a traffic control system, nor interference with vision clearance along any highway, street or road, or at any intersection of two (2) or more streets. All illuminated signs shall be so placed as to prevent the rays and illumination therefrom from being cast upon neighboring residences within a residential district and shall be located not less than one hundred (100) feet from such residential district.

For letter type signs with fabricated letters mounted directly on the building facade, the area shall be computed by the squared off individual letter area, plus fifty (50%) percent.

A. Signs in Residential District: In residential (R) districts, identification signs are permitted as follows:

1. For dwelling principal and accessory uses (see Schedule of Regulations) one (1) sign displaying the street number and name of the occupant of a dwelling unit, not exceeding one (1) square foot in area. Such sign may identify an accessory use.
2. For principal and accessory uses other than dwellings and for Special Exception uses, one (1) bulletin or announcement board not exceeding thirty-two (32) square feet in area. No sign shall be located nearer to a front lot line than one-half (1/2) the depth of the front open space.
3. "For Sale" or "For Rent" signs, not to exceed six (6) square feet in area, advertising only the premises on which erected.
4. In subdivision developments, one (1) subdivision sign advertising the sale or rental of premises may be maintained, having an area of not more than three hundred (300) square feet and having an overall height of not more than twelve (12) feet above the ground.

5. One (1) trespassing, safety or caution sign not over two (2) square feet in area shall be permitted on a lot.
  6. No sign shall be illuminated by other than continuous indirect white light, nor shall contain any visible moving parts.
- B. Signs in Business District: In the business (B) district, identification and business signs are permitted as follows:
1. Any sign permitted in residential districts.
  2. One (1) or more attached signs pertaining to the use of the premises on which they are placed, the total of all such signs not exceeding a total area of one (1) square foot for each three (3) square feet of wall surface area facing front lot line.
  3. No sign facing directly across a street or across an adjoining lot line upon property in a residential district shall be illuminated by other than continuous indirect white light, nor shall contain any visible moving parts.
- C. Signs in Industrial District: In industrial (M) districts, identification, business and advertising signs are permitted as follows:
1. Any sign permitted in Section 15.4 B. not exceeding a surface area of one hundred sixty (160) square feet.
  2. Any sign not exceeding a surface area of one thousand (1,000) square feet, when conforming to the area, height, bulk and placement regulations of Article 7 for buildings in the district located.
- D. Signs in Parking District: In the parking (P-1) district, one (1) sign shall be permitted at each point of ingress and egress to a parking lot to indicate the operator, parking rates and directions of movement. Each such sign shall not exceed fifteen (15) square feet in area, shall not extend more than ten (10) feet in height above grade and shall be entirely on the parking lot.

Besides the signs above indicated, only signs advertising the uses being served by the parking may be erected in P-1 districts. Such signs are prohibited in the buffer strip (see Section 16.3) and shall not be located along or parallel to the street lot lines in a manner that hides any parking spaces from the street and shall not project beyond the lot line of the premises.

Placing, erection, operation or lighting of any sign, structure or device in such manner as to interfere with the necessary free and unobstructed view of vehicular or pedestrian traffic or of traffic signs or signals is prohibited. The color saturation and hue of any illuminated sign shall be such as to preclude confusion with traffic signals.

#### Section 15.5 Performance Standards for Sound, Vibration, Odor and Other Nuisances

It shall be unlawful to carry on or permit to be carried on any activity or operation or use of any land, building or equipment that produces irritants to the sensory perceptions greater than the measures herein established which are hereby determined to be the maximum permissible hazard to humans or to human activities. Such measures may be supplemented by other measures which are duly, determined to be maximum permissible hazards to humans or to human activity.

- A. Sound: The intensity level of sounds shall not exceed the following decibel levels when adjacent to the following types of uses:

<u>Decibels</u>	<u>Adjacent Use</u>	<u>Where Measured</u>
55	Residential Dwelling	Common Lot Line
65	Commercial	Common Lot Line
70	Industrial and Other	Common Lot Line

The sound levels shall be measured with a type of audio output meter approved by the Bureau of Standards. Objectionable noises due to intermittence, beat frequency or shrillness shall be muffled so as not to become a nuisance to adjacent uses.

- B. Vibration: All machinery shall be so mounted and operated as to prevent transmission of ground vibration beyond any lot line of its source where common with a residential district.
- C. Odor: The emission of noxious, odorous matter in such quantities as to be readily detectable at any point along lot lines when diluted in the ratio of one (1) volume of odorous air to four (4) or more volumes of clean air or as to produce a public nuisance or hazard beyond lot lines is prohibited.
- D. Gases: The escape of or emission of any gas which is injurious or destructive or explosive shall be unlawful and may be summarily caused to be abated.
- E. Glare and Heat: Any operation producing intense glare or heat shall be performed within an enclosure so as to completely obscure and shield such operation from direct view from any point along the lot line, except during the period of construction of the facilities to be used and occupied.
- F. Light: Exterior lighting shall be so installed that the surface of the source of light shall not be visible from any bedroom window and shall be so arranged as far as practical- to reflect light away from any residential use, and in no case shall more than one (1) foot candle power of light cross a lot line five (5) feet above the ground in a residential district.
- G. Electromagnetic Radiation: Applicable rules and regulations of the Federal Communications Commission in regard to propagation of electromagnetic radiation are hereby made a part of this Ordinance and shall be on file in the office of the Administrative Officer.
- H. Smoke, Dust, Dirt and Fly Ash: It shall be unlawful to discharge into the atmosphere from any single source of emission whatsoever any air contaminator for a period or periods aggregating more than four (4) minutes in any one-half (1/2) hour which:
1. Is dark or darker in shade than that designated as No. 2 on the Ringelmann Chart. The Ringelmann Chart, as published by the United States Bureau of Mines, which is hereby made a part of this Ordinance, shall be the standard. However, the Umbrascope readings of smoke densities may be used when correlated with the Ringelmann Chart and shall be on file in the Office of the Administrative Officer.

2. Is of such opacity as to obscure an observer's view to a degree equal to or greater than the smoke described in 1 above, except when the emission consists only of water vapor.
  3. The quantity of gas-borne or air-borne solids shall not exceed 0.20 grains - cubic foot of the carrying medium at a temperature of five hundred (500) degrees Fahrenheit.
- I. Drifted and Blown Material: The drifting or air-borne transmission beyond the lot line of dust, particles or debris from any open stockpile shall be unlawful and may be summarily caused to be abated.

#### Section 15.6 Wind Energy Systems<sup>44</sup>

Wind energy systems providing alternative sources of electrical power shall be allowed within the City subject to the restrictions and requirements as set forth in this Section and as further required in the City's Code of Ordinances, which may include the obtaining of a City permit prior to the construction of such devices to ensure the compliance with this Section. The failure to comply with the requirements of this Section shall be considered a misdemeanor resulting in the penalties set forth hereafter and a public nuisance requiring removal of such devices as required by law.

- A. Conflicts with Other Zoning Ordinance Provisions. Where the provisions of this Section are in conflict with dimensional or other provisions of this zoning Ordinance, the provisions of this Section shall be controlling.
- B. Definitions: Certain words and phrases used in this Section shall have the meanings set forth below. All other words and phrases shall be given their common, ordinary meaning, unless the context clearly requires otherwise.

Decibel means the unit of measure used to express the magnitude of sound pressure and sound intensity.

FAA means the Federal Aviation Administration.

Height means the height of a wind energy system measured from ground level or the point of attachment to a structure to the highest point of its mechanical shadow. (See mechanical shadow below.)

Mechanical shadow means the entire envelope that is occupied by the circle swept by the furthest extension of any blade or other exposed moving component of a wind energy system.

Occupied means any structure on real property intended, arranged, or designed to be used from time to time by persons living within it, employed within it, or frequently entering it.

Owner means the owner or owners of the real property to which a wind energy system is attached as evidenced by the records of the Register of Deeds for Bay County, Michigan.

Pedestal means a maximum 12' tall structure that is designed and constructed primarily for the purpose of supporting one wind turbine.

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<sup>44</sup> Section added by Ordinance 2010-1 Adopted February 9, 2010, Effective February 24, 2010.

Roof-mounted means any part of a wind energy system that is located on the roof of a building, fire or parapet walls; stage lofts, chimneys, smokestacks, water tower, or roof structures for the housing of elevators, stairways, tanks, ventilating fans, or similar equipment required to operate and maintain the building.

Shadow flicker means the visible flicker effect when rotating turbine blades cast shadows on the ground and nearby structures causing the repeating pattern of light and shadow.

Tower means any structure, including its supports that are ground-mounted, taller than 12', and designed and constructed primarily for the purpose of supporting one or more wind turbines. This includes self-supporting lattice towers or monopole towers.

Unoccupied means any structure on real property not intended, arranged, or designed to be used from time to time by persons living within it, employed within it, or frequently entering it.

Wind energy system means an electric generating system, consisting of one or more wind turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures & facilities. Such systems are designed for large-scale energy generation, typically for electrical utilities, or to supplement other electricity sources as an accessory use for residential, commercial, waterfront, office, and industrial buildings or facilities, wherein the power generated is used primarily for onsite consumption. All wind energy systems shall be considered personal property and subject to the provisions of the Property Maintenance provisions of the City's Code of Ordinances.

Wind Turbine means a wind energy system that converts wind energy into electricity through the use of a wind turbine generator, and may include a nacelle, rotor, tower, blades, and a pad transformer.

C. General Regulations:

All wind energy systems shall conform to the following standards:

1. All structural, electrical and mechanical components of the wind energy system shall conform to all relevant and applicable local, state and national codes, industry standards, and FAA regulations.
2. Prior to the commencement of any construction, a building permit and an electrical permit application shall be submitted containing the information required by the Code of Ordinances of the City. No construction of any wind energy system shall commence or occur prior to the issuance by the City of a building permit and electrical permit. No permit shall be issued if construction of a wind energy system is not designed within the requirements of this Section and applicable portions of the City Code of Ordinances.
3. Wind energy systems shall not be located so as to cause or allow their shadow flickers to enter occupied structures on adjacent real properties through window or door openings. If it is determined after the issuance of any operating permit required by the City that such is occurring, the operating permit for the system may be revoked, withdrawn, or modified to prohibit such effects inclusive but not limited to the non-operation of such system during time intervals when prohibited events are occurring.

4. Utility notification: No wind energy system shall be installed until a wind energy system permit is obtained as required by city ordinances, which shall include the evidence required by the wind energy system permit application required by the City Code of Ordinances that the applicant's electrical utility company has been informed of the applicant's intent to install an interconnected customer-owned generator.
5. Workable wind energy systems may not be feasible, practical, or operable in all locations within the City due to lot sizes or obstructions blocking wind on adjoining or nearby properties. Setback requirements and height limitations for wind energy systems set forth in this Section have been created for the purpose of safety and therefore no variance altering their requirements or limitations shall be granted due to the existence of operational impairments or hardships.
6. Construction and Design features of wind energy systems shall be as follows:
  - (a) Tower and pedestal-mounted wind energy systems shall maintain a neutral, non-reflective exterior color, or a galvanized steel finish, unless the FAA or other applicable governmental authority requires otherwise.
  - (b) Wind energy systems shall not be artificially lighted unless otherwise required by the FAA or another authorized governmental agency.
  - (c) Wind energy systems may include one small sign, emblem, or decal not larger than 10 inches x 15 inches to identify the name or logo of the manufacturer and/or installer, the make, serial number, and other pertinent information about the wind energy system. Such signs shall not contain advertising copy.
  - (d) Minimum clearances of wind energy systems shall be as follows:
    - (1) The minimum distance between the ground and the mechanical shadow shall be 15 feet.
    - (2) The minimum distance between the mechanical shadow and adjacent unoccupied structures shall be 10 feet.
  - (e) Provisions for safety to which wind energy systems shall be as follows:
    - (1) Towers that are not roof-mounted shall not be climbable from the base of the tower upward for a distance of 15 feet.
    - (2) When roof-mounted wind energy systems can be accessed by the public, such systems shall provide adequate guards and warnings to ensure safety.
    - (3) Wind energy systems shall have automatic braking, governing or a feathering system to prevent uncontrolled rotation or over speeding.

- (4) All wind energy systems shall be fitted with an outside electrical shut off panel accessible to emergency workers in the event of fire or other hazard so as to allow termination of all electrical current from the energy system to any other location.
- (5) A clearly visible warning sign indicating the voltage present shall be permanently placed at the base of each roof-mounted or tower-mounted wind energy system.

(f) Unsafe or inoperative systems.

- (1) Any wind energy system found to be unsafe by the building of electrical official shall be repaired to meet all building permit, construction code requirements.
- (2) If any wind energy system is not used for a period of 12 months or is found to be unsafe by the building official, the owner will be notified by certified mail to make the necessary repairs or to set forth reasons for the operational difficulty and provide a proposed timetable for corrective action. If one is not provided to the satisfaction of the City, the landowner shall remove the wind energy system within 60 days of receipt of the notice to remove.
- (3) If the wind energy system is not repaired as required by the building official in subsection (1) above or not removed within 60 days due to disuse as required by subsection (2) above, the system may be removed by the procedure required by the City Housing Code as stated in the City Code of Ordinances in Title VI, Chapter 1, Section 6.101 through Section 6.1.04 as now exists or may hereafter be amended.

(g) Signal Interference. Wind energy systems shall not interfere with communication systems such as, but not limited to, radio, telephone, television, satellite, or emergency communication.

(h) Wind energy systems may not encroach into setback requirements for principal uses for the zoning district in which they are to be located.

D. Specific Standards All wind energy systems in all zoning districts shall be constructed to the following standards:

1. Wind energy systems may be mounted on towers, pedestals, or roof-mounted subject to building and electrical permit requirements.
2. Roof-mounted wind energy systems may be mounted on an occupied structure subject to building and electrical permit requirements.
3. Wind energy systems mounted on a tower or a pedestal that is attached to the ground and the side of a structure to assist in its support shall be considered ground mounted tower for all purposes and requirements of this Section inclusive of but not limited to setback requirements and height limitations.

4. Wind energy systems shall meet the following setback requirements:
    - (a) Wind energy systems, including their mechanical shadow, may not encroach into boundary line setback requirements for uses for the zoning district in which they are to be located; nor shall they be located between the front lot line and the front wall of dwellings.
    - (b) Wind energy systems, including their mechanical shadow, shall be set back a distance equal to 110 percent of the system height from all adjacent occupied structures, public rights-of-way, utility lines, or the Saginaw River.
    - (c) Wind energy systems on towers shall be set back a distance equal to their height from all other allowed wind energy systems within the district in which it is located and from the boundary line setback requirements for the district in which they are located.
    - (d) Wind energy systems that are roof-mounted shall be set back a distance equal to their height plus the distance from its point of attachment to a structure to the ground from all adjacent occupied structures, other allowed wind energy systems, and from the boundary line setback requirements for the district in which they are located.
  5. Noise. Wind energy systems shall be constructed and operated within the noise limitations and requirements of the City noise control ordinance located at Title IX, Chapter 5 of the City Code of Ordinances or as may be created or amended hereafter and the application and permit requirements of wind energy systems of the City Code of Ordinances that may now exist or may be enacted or amended thereafter.
- E. Wind energy systems meeting the following requirements are a permitted accessory use in R-1 Single-Family Residential, O Office, R-O Residential Office, and P-1 Parking districts and in MU Mixed Use districts south of Woodside Avenue, subject to the following standards:
1. Wind energy systems shall meet the following height standards:
    - (a) The total height of wind energy systems that are ground mounted towers shall not exceed 60 feet in height from the ground to the highest point of the mechanical shadow.
    - (b) Height of wind energy systems that are roof-mounted may not exceed the height of 21 feet from the tallest point of the structure to which it is attached to the highest point of the mechanical shadow.
  2. Whether mounted on the ground or a roof, all wind energy systems in residential areas shall not be supported through the use of guy wires or any other supporting aid.
  3. Wind energy systems in these districts shall be limited to one wind turbine, tower, or pedestal and its associated control or conversion electronics.
  4. Rotor diameter is limited to 21 feet.

F. The following wind energy systems, exceeding 100 feet, are a permitted use after special use approval in B-1 Business, BP-Business Park, M-1 Industrial, M-2 Industrial, and D-1 Developmental Districts and in MU Mixed Use districts north of Woodside Avenue subject to the following standards:

1. The total height of wind energy systems that are ground mounted towers shall not exceed 100 feet in height from the ground to the highest point of the mechanical shadow. However, a wind energy system may be constructed of a height up to 150 feet if a special land use permit is obtained from the City Planning Commission.
2. Height of wind energy systems that are roof-mounted may not exceed the height of 100 feet from the ground so long as the roof upon which it is attached shall have the structural integrity to support it as determined by the building official.
3. Wind energy systems may consist of one or more wind turbines, towers, or pedestals and associated control or conversion electronics so long as setback requirements required herein are maintained.
4. Rotor diameter shall be limited to 35 feet.

G. Penalties. Whosoever violates any of the provisions of this Section, with or without notice by the City of such violation, shall be guilty of a misdemeanor and subject to a penalty of up to five hundred dollars (\$500.00) fine and/or ninety (90) days in jail. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

Each violation may also be considered a nuisance in violation of Chapter 1 of Title IX of the City Code of Ordinances, the provisions of which the City may invoke simultaneously with the criminal penalties above. Additionally, the City may seek injunctive or other judicial relief at law generally as it deems appropriate.

ARTICLE 16  
OFF-STREET PARKING AND LOADING

Section 16.1 Required Off-Street Parking, General

Off-street parking in conjunction with all land and building uses shall be provided as herein prescribed.

- A. The minimum number of off-street parking spaces shall be determined in accordance with the following table in Section 16.2. For uses not specifically mentioned therein, off-street parking requirements shall be interpreted by the Board of Zoning Appeals from requirements for similar uses.
- B. Any area once designated as required off-street parking shall never be changed to any other use unless and until equally required facilities are provided elsewhere. Off-street parking existing at the effective date of this Ordinance in connection with the operation of an existing building or use shall not be reduced to an amount less than would hereinafter be required for such building or use.
- C. The off-street parking may be provided either by individual action or by a parking program carried out through public action, whether by a special assessment district or otherwise.
- D. Two (2) or more buildings or uses may collectively provide the required off-street parking, in which case the required number of parking spaces shall be not less than the sum of the requirements for the several individual uses computed separately. However, in cases of dual functioning of off-street parking where peak operating hours do not overlap, the Board of Zoning Appeals may grant a Special Exception based on the peak hour demand.
- E. Required off-street parking shall be for the use of occupants, visitors and patrons and shall be limited in use to motor The storage of merchandise, motor vehicles for sale or the repair of vehicles is prohibited. All off-street parking, whether public or private, for non-residential uses shall be either on the same lot or within three hundred (300) feet of the building it is intended to serve, measured from the nearest point of the building to the nearest point of the off-street parking lot.
- F. Where off-street parking in permanent public ownership and operation exists in quantity and location greater than would be necessary to fulfill the requirements of this Ordinance for the existing contiguous buildings, then such excess number of parking spaces may be prorated to the land area within three hundred (300) feet, as measured in paragraph E. above, to the extent that the parking requirements are thereby met. The Board of Zoning Appeals shall determine such proration calculation. To the extent of such proration calculation, the Board of Zoning Appeals may grant Special Exception to the minimum number of off-street parking spaces required to be provided prior to the issuance of a Certificate of Occupancy for any new building or new use.

- G. Off-street parking shall be provided as hereinafter required, prior to the issuance of a Certificate of Occupancy: provided, where a parking program for a specified area to be carried out by public action is established by an official plan that proposes parking spaces comparable to the quantitative requirements of this Ordinance and includes a time schedule of land acquisition and construction, Certificates of Occupancy for all land or building uses within such officially planned area shall not be contingent upon prior provision of off-street parking.

#### Section 16.2 Table of Required Off-Street Parking Spaces

(The Use is followed by the number of required spaces - unit of measurement, rounded off to nearest unit).

- A. Residential, including dwelling units in all types of buildings
  - 1 - Dwelling unit
- B. Hospitals, convents, homes for aged, convalescent homes
  - 1 - bed
- C. Private clubs, fraternities, dormitories
  - 1 - Two (2) beds or one hundred (100) square feet usable floor area, whichever is greater
- D. Tourist homes, motels, hotels
  - 1 - rooming unit and each dwelling unit
- E. Theaters, auditoriums
  - 1 - Four (4) seats
- F. Churches, mortuaries
  - 1 - Four (4) seats or twenty-eight (28) square feet of usable floor area of auditorium, whichever is greater
- G. Elementary, junior high schools
  - 1 - Two (2) teachers, employees and administrators or twenty-eight (28) square feet of usable floor area of largest auditorium or other public assembly room, whichever is greater
- H. High schools, colleges
  - 1 - Two (2) teachers, employees and administrators plus one (1) space per ten (10) students or twenty-eight (28) square feet of usable floor area of largest auditorium or other public assembly room, whichever is greater
- I. Dance halls, exhibition halls and assembly halls without fixed seats
  - 1 - One hundred (100) square feet of usable floor area
- J. Banks, business offices
  - 1 - Three hundred (300) square feet of usable floor area plus one (1) parking space each three (3) employees

- K. Offices of architects, attorneys, accountants, real estate offices, insurance offices
  - 1 - Five hundred (500) square feet of usable floor area plus one (1) parking space for each two (2) employees
- L. Professional offices of doctors and dentists
  - 10 - First doctor
  - 8 - Second doctor
  - 8 - Third doctor
  - 6 - Each additional doctor
- M. Stadiums and sports arenas
  - 1 - Eight (8) seats or twelve (12) feet of benches
- N. Bowling alleys
  - 3 - Alley
- O. Swimming pools
  - 1 - Thirty (30) square feet of water area
- P. Establishments for sale and consumption on the premises of beverages, food or refreshments
  - 1 - One hundred (100) square feet of usable floor area
- Q. Retail stores except as otherwise specified herein
  - 1 - One hundred fifty (150) square feet of usable floor area
- R. Residential hotel
  - 1 - Each dwelling unit or rooming unit
- S. Furniture and appliance retail stores; household equipment repair shops; showroom of plumber, decorator, electrical or similar trade; clothing and shoe repair; cleaners and laundry; motor vehicle sales room
  - 1 - Eight hundred (800) square feet of usable floor area exclusive of usable floor area occupied in processing or manufacturing for which requirements see industrial establishments below (Use "U")
- T. Beauty parlor or barber shops
  - 2 - barber or beauty shop chair
- U. Industrial establishments including manufacturing & research and testing laboratories; creameries, bottling works; printing, plumbing or electrical workshops; telephone exchange buildings
  - 1 - Two (2) employees, computing on the basis of greatest number of persons employed at any one (1) period during the day or night.

### Section 16.3 Off-Street Parking Lot Layout, Construction and Maintenance

Wherever a parking lot is built as required off-street parking, such parking lot shall be laid out, constructed and maintained in accordance with the following requirements. In determining conformity with the requirements set forth in A. through J. below, the Administrative Officer may request the findings of the City Engineer.

- A. Each parking space shall constitute a net land area of at least one hundred eighty (180) square feet. The total parking lot space, including access lanes, shall constitute at least three hundred (300) square feet of land area - parking space.
- B. Adequate ingress and egress to the parking lot by means of clearly limited and defined drives shall be provided for vehicles.
- C. Where the parking lot abuts a residential district, the required setbacks of parking spaces are:
  1. Side lot lines: Five (5) feet from such side lot line
  2. Contiguous common frontage in same block: Five (5) feet from such lot line
  3. Across the street and opposite, with residential lots fronting on such street: Five (5) feet from such lot line
  4. Across the street and opposite, or contiguous to and in same block with residential side lot lines on such street: Five (5) feet from street lot line
  5. Rear lot line: None
- D. The land between the setback line and the lot line in a parking lot is for the purposes of this Ordinance called a buffer strip. There shall be bumper stops or wheel chocks provided so as to prevent any vehicle from projecting over the buffer strips. The ground of the buffer strip shall be used only for the purpose of plant materials.
- E. Where buffer strips are not required, bumper stops or wheel chocks shall be provided, so located as to prevent any vehicle from projecting over the lot line.
- F. Where the parking lot boundary adjoins property zoned for residential use, a suitable chain link wire or masonry fence shall be provided, but shall not extend into the required front open space of the abutting residential lot. Such fence shall be not less than four (4) feet or more than six (6) feet in height. Where a chain link wire fence is used, it shall be supplemented with a visual screen of evergreen plant materials at least four (4) feet mature height and maintained in good condition.
- G. The parking lot shall be drained to eliminate surface water.
- H. The surface of the parking lot, including drives and aisles, excepting the buffer strips, shall be constructed of a dustless and durable all-weather surfacing. Lighting shall be arranged to reflect away from residential building, residential districts and streets.
- I. Parking structures may be built to satisfy off-street parking requirements when located in Commercial or Industrial zone districts, subject to the area, height, bulk and placement regulations of such district in which located.
- J. Automotive Sales Areas: Every parcel of land hereafter used as an automobile or trailer sales area or as an automobile filling station shall be subject to the above requirements of this section.

## Section 16.4 Off-Street Loading and Unloading

On the same premises with every building, structure or part thereof, erected and occupied for manufacturing, storage warehousing, retailing, display, including a department store, a wholesale store, a market, a hotel, a motel, a hospital, a mortuary, a laundry, dry cleaning or other uses similarly involving the receipt or distribution of vehicles or materials or merchandise, there shall be provided and maintained on the lot adequate space for standing, loading and unloading services adjacent to the opening used for loading and unloading, designed to avoid interference with public use of streets and alleys.

Such loading and unloading space shall be an area in minimum ten (10) feet by forty (40) feet with a fourteen (14) foot height clearance and shall be provided according to the following table.

The following table lists the gross usable floor area in square feet and the loading and unloading spaces required in terms of square feet of usable floor area:

0 to 20,000 square feet

One (1) space

20,000 to 100,000 square feet

One (1) space plus one (1) space for each 20,000 square feet of excess over 20,000 square feet

100,000 to 500,000 square feet

Five (5) spaces plus one (1) space for each 40,000 square feet of excess over 100,000 square feet

Over 500,000 square feet

Fifteen (15) spaces plus one (1) space for each 80,000 square feet of excess over 500,000 square feet

ARTICLE 17  
SPECIAL LAND USE PERMIT REQUIREMENTS AND STANDARDS

Section 17.1 Intent and Purpose<sup>45</sup>

It is the intent of this Section to provide a set of procedures and standards for special uses of land or structure which, because of their unique characteristics, require special consideration in relation to the welfare of adjacent properties and the community as a whole.

It is the expressed purpose of the regulations and standards herein, to allow, on one hand, practical latitude for the investor or developer, but at the same time maintain adequate provision for the protection of the health, safety, convenience and general welfare of the community.

For the purposes of this ordinance the following Special Land Use Categories are identified, which together with cited Special Land Uses within the various districts, are operational under the conditions and standards of this Chapter.

- A. Institutional uses (17.4)
- B. Clubs, lodges and meeting places for other Organizations (17.5)
- C. Planned unit developments (17.6)
- D. Funeral homes and mortuaries (17.7)
- E. Gasoline filling stations (17.8)
- F. Public parks, playgrounds, and playfields (17.9)
- G. Public utility service buildings or regulator station (17.10)
- H. Personal services and small retail businesses primarily serving the permitted uses. (17.13)
- I. Rooming or boarding houses (17.14)
- J. Temporary uses such as displays (17.17)
- K. Other principal uses having the same general character as permitted principal uses (17.18)
- L. Adult entertainment facilities (17.19)
- M. Arcades and other places of amusements (17.20)
- N. Apartment for residences within a business building (17.21)
- O. Restaurants and taverns (17.22)
- P. Junk yards (17.23)
- Q. Hazardous material disposal (17.24)
- R. Marine Terminal (17.25)
- S. Mobile home park (17.26)

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<sup>45</sup> Section amended by Ordinance 2009-1 Adopted December 8, 2009, Effective December 23, 2009

- T. Townhouses, apartments and condominiums (17.27)
- U. Wholesale and warehouse distribution facilities (17.28)
- V. Light industrial establishments (17.29)
- W. Construction services (17.30)
- X. Medical Marihuana Dispensaries (17.31)<sup>46</sup>

The following, together with previous references in other chapters of this Ordinance, designate the requirements, procedures and standards which must be met before a Special Use Permit can be issued.

#### Section 17.2 Permit Procedures

The application for a Special Land Use Permit shall be submitted and processed under the following procedures:

- A. Submission of Application: An application shall be submitted through the Zoning Administrator on a special form for that purpose. Each application shall be accompanied by the payment of a fee as established by the City Council.

In the event the allowance of a desired use requires both a rezoning and Special Land Use Permit, both requests may be submitted jointly, subject to the following:

1. The ordinance procedures for each shall be followed as specified in this Article.
2. All applicable standards and specifications required by the ordinance shall be observed.

- B. Data Required:

1. The special form shall be completed in full by the applicant including a statement by the applicant that Section 17.3 of this Article can be complied with.
2. Final approval of a site plan that conforms to the requirements of Section 6.1.
3. Preliminary plans and specifications of the proposed development.

- C. The City of Essexville Planning Commission: The application, together with all required data shall be transmitted to the Planning Commission for review. After review and study of any application and related material, the Planning Commission shall hold a public hearing after at least one (1) publication in a newspaper of general circulation in the community, not less than fifteen (15) days prior to said hearing. All property owners and residents within three hundred (300) feet of the boundary of the property in question shall receive notice by mail or personal delivery, not less than fifteen (15) days before the public hearing. If the name of the occupant is not known, the term, "occupant" may be used for the intended recipient of the notice. The notice shall:<sup>47</sup>

1. Describe the nature of the special land use request.
2. Indicate the property subject to the special land use request.
3. State when and where the public hearing will be held.
4. Indicate when and where comments will be received.

<sup>46</sup> Added by Ordinance 2011-01 Adopted May 10, 2011, Effective May 25, 2011

<sup>47</sup> Paragraph amended by Ordinance 2009-1 Adopted December 8, 2009, Effective December 23, 2009

- D. Permit Expiration: A Special Land Use Permit issued pursuant to this Chapter shall be valid for one (1) year from the date of issuance of said permit. If construction has not commenced and proceeded meaningfully toward completion by the end of this one (1) year period, the Zoning Administrator shall notify the applicant in writing of the expiration of said permit.
- E. Revocation: The Planning Commission shall have the authority to revoke any Special Land Use Permit after it has been proven that the holder of the permit has failed to comply with any of the applicable requirements in Article 17, or other applicable sections. Written notice of violation shall be given by the Zoning Administrator to the holder of the permit and correction must be made within thirty (30) days. After this thirty (30) day period an additional notice shall be given by the Zoning Administrator that the use for which the permit was granted must cease within thirty (30) days from date of second notice.
- F. Reapplication: No application for a Special Land Use Permit which has been denied wholly or in part by the Planning Commission shall be resubmitted until the expiration of one (1) year or more from the date of such denial, except on the grounds of newly discovered evidence or proof or change of conditions.

**Section 17.27. Medical Marihuana Dispensaries.**<sup>48</sup>

- A. See Section 11A.4.
- B. See requirements of the Article 17, Section 17.1, 17.2, and 17.3.

Section 17.3 Permit Standards

Before formulating recommendations on a Special Land Use Permit Application, the Planning Commission shall establish that the following general standards, as well as specific standards, shall be satisfied:

- A. General Standards: The Planning Commission shall review each application for the purpose of determining that each proposed use meets the following standards and, in addition, shall find adequate evidence that each use on the proposed site will:
  1. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.
  2. Not be hazardous or disturbing to existing or intended uses in the same general area and will be an improvement to property in the immediate vicinity and to the community as a whole.
  3. Be served adequately by essential public facilities and services, such as highways, streets, police, and fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.
  4. Not create excessive additional requirements at public cost for public facilities and services.
  5. Not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or

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<sup>48</sup> Section added by Ordinance 2011-01; Adopted May 10, 2011, Effective May 25, 2011

the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.

6. Be consistent with the intent and purpose of the zoning district in which it is proposed to locate such use.
- B. Conditions and Safeguards: The Planning Commission may stipulate such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of this Ordinance will be observed. The breach of any condition, safeguard, or requirements shall automatically invalidate the permit granted.
  - C. Specific Requirements: The general standards and requirements of this Section are basic to all uses authorized by Special Land Use Permit. The specific and detailed requirements set forth in the following Section related to particular uses and are requirements which must be met by those requirements where applicable.
  - D. Permitted Uses: Uses permitted by Special Land Use Permit shall be those listed by districts as noted in Articles 7, 8, 9, 11, 12, 14 and 14A and as herein regulated, controlled or defined.

#### Section 17.4 Institutional Uses

- A. Authorization: In recognition of the many institutional types of non-residential functions that have been found compatible and reasonably harmonious with residential uses, certain institutional uses specified in this section may be authorized by the issuance of a Special Land Use Permit. Such permit shall not be issued unless all the procedures and applicable requirements stated herewith, together with the additional requirements of this Section can be complied with.
- B. Uses: The following uses may be authorized in those districts as noted under Articles 7, 8 and 9 and PROVIDED the applicable conditions are complied with:
  1. Institutions for Human Care. Hospitals, sanitariums, nursing or convalescent homes, homes for the aged, and philanthropic and charitable institutions.
  2. Religious Institutions. Churches or similar places of worship, convents, parsonages and parish houses, and other housing for clergy.
  3. Educational and Social Institutions. Public and private elementary and secondary schools, and institutions for higher education, PROVIDED that none are operated for profit, auditoriums and other places of assembly, and centers for social activities, including charitable and philanthropic activities other than activities conducted as a gainful business or of a commercial nature.
  4. Public Buildings and Public Service Installations. Publicly owned and operated buildings, public utility buildings and structures, transformer stations and substations, and gas regulator stations.
- C. Institutions Specifically Prohibited. Camps or correctional institutions shall not be permitted in any residential district.
- D. Site Location Principles: The following principles shall be utilized to evaluate the proposed location of any institutional use within a permitted district. These principles are alterable, depending upon the specific conditions of each situation, but they shall be applied by the Planning Commission as general guidelines to help assess the impact of an institutional use upon the district in which such use is proposed to be located.

1. Any institutional structure or use to be located within a residential district should preferably be located at the edge of a residential district, abutting either a business or industrial district, or adjacent to a public open space.
  2. Motor vehicle entrance should be made on a principal arterial or as immediately accessible from a principal arterial as to avoid the impact of traffic generated by the institutional use upon a residential area.
  3. Site locations should be preferred that offer natural or man-made barriers that would lessen the effect of the intrusion of the institutional use into a residential area.
- E. Development Requirements: A Special Land Use issued for the occupancy of a structure erection, reconstruction, or alteration of a structure unless complying with the following site development requirements. These requirements are not alterable except as noted:
1. Hospitals, Schools, Churches, Temples and Synagogues.
    - (a) The proposed site shall be at least five (5) acres in area.
    - (b) The proposed site shall have at least one (1) property line abutting a principal or minor arterial or a collector as classified on the adopted major street plan. All ingress and egress to the off-street parking area (for guests, employees, and staff) shall be directly from the major thoroughfares. The depth of the lot shall be three (3) times the width of the lot.
    - (c) All two (2) story structures shall be at least sixty (60) feet from all boundary lines or street lines. Buildings less than two (2) stories shall be no closer than forty (40) feet to any property or street line. For buildings above two (2) stories, the building shall be set back from the initial sixty (60) feet set back an additional one (1) foot for each foot of additional height above two (2) stories.
    - (d) No more than thirty-five (35%) percent of the gross site shall be covered by buildings.
    - (e) Ambulance and delivery areas shall be obscured from all residential view by a solid masonry wall six (6) feet in height. Access to and from the delivery and ambulance area shall be directly from a principal or minor arterial or collector street.
    - (f) All signs shall be in accordance with the schedule outlined in Section 15.4.
    - (g) Off-street parking space shall be provided in accordance with the schedule outlined in Article 16.
  2. For all other uses that may be permitted, except public utility transformer stations and substations, gas regulator stations, and housing for religious personnel attached to a church or school function:
    - (a) The proposed site shall be at least one (1) acre in area.
    - (b) No building shall be closer than forty (40) feet to any property or street line. No building shall be erected to a height greater than that permitted in the district in which it is located, except as may be provided under height exceptions for the district in question.

- (c) No more than twenty-five (25%) percent of the gross site area shall be covered by buildings.
  - (d) All buildings shall be of an appearance that shall be harmonious and unified as a group of buildings blend appropriately with the surrounding area.
  - (e) All signs shall be in accordance with the schedule outlined in Section 15.4.
  - (f) Off-street parking shall be provided in accordance with the schedule outlined in Article 16. No parking space shall be provided in the front yard and the parking area shall be screened from surrounding residential areas by a wall or fence, in combination with suitable plant materials, not less than four (4) feet in height.
3. For public utility transformer stations and substations, gas regulator stations and housing for religious personnel attached to a church or school function:
- (a) Lot area and lot width shall be no less than that specified for the district in which the proposed use would be located.
  - (b) Yard and setback requirements shall be no less than that specified for the district in which the proposed use would be located.
  - (c) No building shall be erected to a height greater than that permitted in the district in which the proposed use would be located.
  - (d) No more than twenty-five (25%) percent of the lot area may be covered by buildings.
  - (e) All buildings shall be harmonious in appearance with the surrounding residential area and shall be similar in design and appearance to any other buildings on the same site development.
  - (f) Where mechanical equipment is located in the open air, it shall be screened from the surrounding residential area by suitable plant material and it shall be fenced for safety. All buildings housing mechanical equipment shall be landscaped and maintained to harmonize with the surrounding area.
  - (g) All signs shall be in accordance with the schedule outlined in Section 15.4.
  - (h) Off-street parking space shall be provided in accordance with the schedule outlined in Article 16.

Section 17.5 Clubs, Lodges and Meeting Places for Other Organizations

- A. Authorization: These uses may be permitted within Office, as well as the Residential-Office Districts by issuance of a Special Land Use Permit pursuant to district allowance and all standards herein specified.
- B. Uses: The following uses may be authorized in those districts as noted under Articles 8 and 9 and, PROVIDED the applicable requirements are complied with:
  - 1. Service clubs and lodges
  - 2. Yacht clubs
  - 3. Athletic and sports clubs

- C. Accessory uses for a permitted use shall be construed to include restaurant and other eating or drinking establishments and such retail sales directly connected with the conduct of the principal use.
- D. Site Location Principles: The following principles shall be used in evaluating the proposed location of a permitted use under Section 17.5.
  - 1. Allowed use should be located to be immediately accessible from a principal or minor arterial or collector street as classified by the adopted major street plan.
  - 2. Site location should be allowed which enhances the natural environment and amenities for community life.
- E. Development Requirements The following standards shall be applicable as basic requirements for the use of land or for the erection, reconstruction, or alteration of permitted structures.
  - 1. Lighting shall be shielded to reduce glare and shall be so arranged and maintained as to direct the light away from all residential lands which adjoin the site.
  - 2. Off-street parking shall be provided as required in Article 16, which shall include additional spaces which may be required for such accessory uses as a restaurant or bar.
  - 3. Signs shall be in accordance with the schedule outlined in Section 15.4.
  - 4. Minimum yard and height standards require that no building shall be closer than fifty (50) feet to any property or street line. No building shall be erected to a height greater than that permitted in the District in which it is located, except as may be provided under height exceptions for the district in question.

#### Section 17.6 Planned Unit Residential Development

- A. Authorization: Rapid and intensive urbanization over the past decade has produced a need for an economical single-family living unit that is adaptable to urban densities but that retains many of the attractive features of the suburban home. Among the housing concepts emerging to meet this need are townhouses, row houses, garden apartments and similar types of housing units with common property areas; cluster-types of subdivisions in which housing units are arranged in cluster forms, with clusters separated from each other by common open space; and housing units developed with related recreational space, such as swimming pools, play areas, community centers, and other recreational facilities. Planned unit developments may be permitted with a Special Land Use Permit in the Residential and Residential-Office zoning districts. It is the purpose of this section to encourage more imaginative and livable housing environments within the residential districts, as noted, through a planned reduction, or averaging, of the individual lot area requirements for each zone district PROVIDING the overall density requirements for each district remains the same.

Such averaging or reduction of lot area requirements shall only be permitted when a land owner, or group of owners acting jointly, can plan and develop a tract of land as one complex land use unit, rather than an aggregation of individual buildings located on separate, unrelated lots. Under these conditions, a Special Land Use Permit may be issued for the construction and occupancy of a planned unit development PROVIDING the standards, procedures, and requirements set forth in this Section can be complied with.

B. Objectives: The following objectives shall be considered in reviewing any application for a Special Land Use Permit for planned unit development:

1. To provide a more desirable living environment by preserving the natural character of open fields, stands of trees, brooks, ponds, floodplains, hills, and similar natural assets.
2. To encourage the provision of open space and the development of recreational facilities in a generally central location and within reasonable distance of all living units.
3. To encourage developers to use a more creative and imaginative approach in the development of residential areas.
4. To provide for more efficient and aesthetic use of open areas by allowing the developer to reduce development costs through the bypassing of natural obstacles in the residential site.
5. To encourage variety in the physical development pattern of the community by providing a variety and mixture of housing types.

C. Qualifying Conditions: Any application for a Special Land Use Permit shall meet the following conditions to qualify for consideration as planned unit development:

1. The planned unit development site shall be under the control of one (1) owner or group of owners, and shall be capable of being planned and developed as one (1) integral unit.”
2. Public water and sewer facilities shall be available at the cost of development or shall be provided as part of the site development and maintained as a private utility with easements provided to the City.
3. For each square foot of land gained through the reduction or averaging of lot sizes, equal amounts of land shall be dedicated to the public or shall be set aside for the common use of the home or lot owners within the planned unit development under legal procedures which shall also give the public a covenant or interest therein, so that there are assurances that the required open space shall remain open.
4. The proposed planned unit development shall meet all of the general standards outlined herein.

D. Uses That May Be Permitted: The following uses of land and structures may be permitted within planned unit development, subject to the district limitation as herein listed.

1. Single family.
2. Two-family dwellings.

3. Townhouses, row houses, or other similar housing types which can be defined as a single-family attached dwelling with no side yards between adjacent dwelling units, PROVIDED that there shall be no more than a length of one hundred fifty (150) feet in any contiguous group allowed.
4. Recreation and open space, PROVIDED that only the following land uses may be set aside as common land for open space or recreation use under the provisions of this Section.
  - (a) Private recreation facilities, such as swimming pools, or other recreation facilities which are limited to the use of the owners or occupants of the lots located within the planned unit development.
  - (b) Historic building sites, or historical sites, parks and parkway areas, ornamental parks, extensive areas with tree cover, low lands along streams or areas of rough terrain when such areas have natural features worthy of scenic preservation.
5. Customary accessory uses, as permitted in districts where located.

E. Lot Variation and Development Requirements: The lot area for planned unit developments within Residential "R-1" Districts may be averaged or reduced from those sizes required by the applicable zoning district within which said development is located by compliance with the following requirements:

1. Site Acreage Computation. The gross acreage proposed for a planned unit development shall be computed to determine the total land area available for development into lots under the minimum lot size requirements of the applicable zoning district in which the proposed planned unit development is located.

In arriving at a gross acreage figure, the following land shall not be considered as part of the gross acreage in computing the maximum number of lots and/or dwelling units that may be created under this procedure:

- (a) Land utilized by public utilities as easements, for major facilities, such as electric transmission lines, sewer lines, watermains, or other similar lands which are not available to the other because of such easement.
- (b) Lands within floodways.

2. Maximum Number of Lots and Dwelling Units. After the total gross area available for development has been determined by the above procedure, the maximum number of lots and/or dwelling units that may be approved within a planned unit development shall be computed by subtracting from the total gross area available a fixed percentage of said total for street right-of-way purposes, and dividing the remaining net area available by, the minimum lot area requirement of the zoning district in which the planned unit development is located.
3. The fixed percentages for street right-of-way purposes to be subtracted from the total gross area available for development shall be determined according to the following schedule:

<u>District Use</u>	<u>% of Project Area</u>
Single-Family Detached	25
Two-Family and Multi-Family	20

These percentages shall apply regardless of the amount of land actually required for street right-of-way.

Under this procedure, individual lots may be reduced in area below the minimum lot size required by the zone district in which the planned unit development is located, PROVIDED that the total number of dwelling units and/or lots created within the development is not more than the maximum number that would be allowed if the tract were developed under the minimum lot area requirements of the applicable zone district in which it is located. In no development shall the number of units exceed ten (10) units - acre.

Recognizing that good project planning, provision of adequate and developed open space and sound site design, minimize the effects of crowding associated with higher densities, the developer at the time of a special land use permit may also request a maximum of up to ten (10%) percent increase in permitted dwelling unit density as above computed.

Said request may be granted as a condition of special land use permit PROVIDED increased density does not result in creation of any of these conditions:

- (a) Inconvenience or unsafe access to the planned development.
- (b) Traffic congestion in streets which adjoin the planned development.
- (c) An excessive burden on public service or utilities including schools which serve the planned development.

4. Permissive Minimum Lot Area. Notwithstanding other procedures set forth in this Section, lot sizes within planned unit developments shall not be varied or reduced in area below the following standards:

- (a) One-family detached dwelling structure: hundred (5,500) square feet of lot area.
- (b) Two-family dwelling structure: Seven (7,500) square feet of lot area.
- (c) Townhouses, row houses, or other similar permitted single-family attached dwelling types: Five thousand five hundred (5,500) square feet of lot area for the first dwelling unit in each structure plus four thousand (4,000) square feet for each additional dwelling unit within a structure.

5. Permissive Minimum Yard Requirements. Under the lot averaging or reduction procedure, each lot shall have at least the following minimum yards:

- (a) Front Yard: Twenty (20) feet for all dwellings, PROVIDED that front yard requirements may be varied by the Planning Commission after consideration of common greens or other common open space if such provides an average of twenty (20) feet of front yard area - dwelling unit.
- (b) Side Yard: Five (5) feet on each side for all one-family and two-family dwellings; none for townhouses or row houses, PROVIDED that there shall be a minimum of twenty (20) feet between ends of contiguous groups of dwelling units.

(c) Rear Yard: Twenty-five (25) feet for all dwellings, PROVIDED that rear yard requirements may be varied by the Planning Commission after consideration of common open space lands or parks which abut the rear yard area.

(d) Perimeter Setback: The yard requirements at the exterior boundaries of the project will not be less than the minimum in the District where located.

6. Maximum Permissive Building Height. Two and one-half (2-1/2) stories but not exceeding thirty (30) feet. Accessory buildings shall not exceed a height of sixteen (16) feet.

7. Minimum floor area shall be required in the following amounts:

<u>Structure</u>	<u>Required Area</u>
Single-family detached	Each dwelling unit shall have a minimum finished living area of seven hundred twenty (720) sq. ft. of floor area with a minimum of four hundred (400) sq. ft. on the ground floor for units of more than one (1) story.
Attached single-family; including two-family and townhouses	Each dwelling unit shall have a minimum finished living area of seven hundred twenty (720) sq. ft. of floor area with a minimum of four hundred (400) sq. ft. on the ground floor for units of more than one story.
Multiple-family dwellings	
0 bedrooms	600 square feet
1 bedroom	720 square feet
2 bedroom	820 square feet
3 bedroom	920 square feet
4 bedrooms or more	1,020 square feet

8. Signs, in accordance with Section 15.4.

9. Off-street parking in accordance with the schedule outlined in Article 16.

F. Open Space Requirements: For Planned Unit Developments over five (5) acres in size each square foot of land gained through the averaging or reduction of lot sizes under the provisions of this Section, equal amounts of land shall be provided in open space. All open space, tree cover, recreational area, scenic vista, or other authorized open land areas shall be either set aside as common land for the sole benefit, use and enjoyment of present and future lot or home owners within the development, or shall be dedicated to the general public as park land for the use Or the general public. The Planning Commission shall determine which of these options is most appropriate and shall recommend to the legislative body one (1) of the following procedures as part of its approval of a Special Land Use Permit for a planned unit development:

1. That open space land shall be covered by proper legal procedures from the tract owner or owners to a homeowners association or other similar nonprofit organization so that fee simple title shall be vested in tract lot owners as tenants in common, PROVIDED that suitable land and any buildings thereon, and PROVIDED FURTHER that an open space easement for said land be conveyed to the legislative body to assure that open space land remains open.
2. That open space land shall be dedicated to the general public for parks or recreational purposes by the tract owner or owners, PROVIDED that the location and extent of said land conforms to the Development Plan and PROVIDED FURTHER that access to and the characteristics of said land is such that it will be readily available to and desirable for public use, development, and maintenance.

It is the intent of this Section that in cases where option (2) above is determined to be in the best interest of the general public that the owners or developers of the planned unit development shall not be compelled or required to improve the natural condition of said open space lands.

- G. Street Development Requirements: Street standards and specifications adopted by the City of Essexville City Council and all applicable local standards shall be complied with for all street improvements.

#### Section 17.7 Funeral Homes and Mortuaries

- A. Authorization: Because funeral homes and mortuaries perform special and necessary services to urban populations, and in recognition of the unique location and site development characteristics of these functions, such uses of land may be authorized by Special Land Use Permit within R-O Districts under Article 9 when all of the procedures and applicable requirements stated and the additional requirements of this Section can be complied with.
- B. Uses That May Be Permitted: Funeral homes, undertaking parlors, and mortuaries, PROVIDED that the conduct of all aspects of activities related to such uses shall take place within the principal building and not in an accessory building. A caretaker's residence may be provided within the principal building.
- C. Development Requirements: The following requirements for site development, together with any other applicable requirements of this Ordinance shall be complied with:
1. Minimum Site Size. One (1) acre site with a minimum width of one hundred fifty (150) feet.
  2. Site Location. The proposed site shall front upon a major or minor arterial or principal collector as classified on the adopted street plan. All ingress and egress to the site shall be directly from said thoroughfare.
  3. Yards. Front, side and rear yards shall be at least forty (40) feet, except on those sides adjacent to non-residential districts wherein it shall be twenty (20) feet. All yards shall be appropriately landscaped in trees, shrubs, and grass. No structures or parking areas shall be permitted in said yards, except that rear yards may be used for parking purposes under the requirements specified, and except for required entrance drives and those walls and/or fences used to obscure the use from abutting residential districts.
  4. Signs as provided in Section 15.4.

5. Off-street parking as provided in Article 16.

Section 17.8 Gasoline Filling Station

- A. Authorization: Facilities to serve motor vehicles are of considerable importance within urbanizing areas where the basic mode of transportation is by private automobile. The continued growth of motor vehicle registrations and of total miles traveled annually has stimulated additional needs for retailing gasoline and associated products. To meet the demands of location and space for this type of retail facility requires careful planning to properly integrate the service station function into the pattern of other commercial and retail activities serving the community. Because such integration requires special considerations relating to location, site layout, storage facilities, traffic, safety, and compatibility with surrounding uses of land, this Ordinance requires conformance to the standards set forth in this Section before a building permit may be issued for a gasoline service station under a Special Land Use Permit within B-1, M-1 and M-2 zoning districts.
- B. Objectives: It is the intent of this Section to exercise a measure of control over service stations and permitted buildings, and their sites, and to establish a basic set of standards within which individual solutions may be developed to meet the retail service needs of motor vehicles. The objectives of the regulations set forth in this Section are to:
1. Promote the type of development which will be compatible with other land use activities located in areas where service stations will be constructed.
  2. Control those aspects of service station design, site layout, and operation which may, unless regulated, be damaging to surrounding uses of land.
  3. Minimize the traffic congestion and safety hazards which are inherent in service station activity.
- C. Uses That May Be Permitted: Gasoline filling stations as defined in Article 2, Section 2.8, including the servicing of motor vehicles under one and one-half (1½) tons rated capacity such as minor adjustments to motor vehicles, sales and installation of automotive accessories, and other servicing of motor vehicles, PROVIDED such accessory uses and services are conducted wholly within a completely enclosed building.
- D. Site Development Requirements: The following requirements for site development, together with any other applicable requirements of this Ordinance shall be complied with:
1. Minimum Site Size. Fifteen thousand (15,000) square feet with a minimum width of one hundred fifty (150) feet.
  2. Site Location. The proposed site shall have at least one (1) property line on a principal or minor arterial.
  3. Building Setback. The service station building, or permitted buildings shall be set back fifty (50) feet from all street right-of-way lines and shall not be located closer than fifty (50) feet to any property line in a residential district unless separated therefrom by a street or alley.
    - (a) No installations, except walls or fencing and permitted signs, lighting, and essential services, may be constructed closer than twenty (20) feet to the line of any street right-of-way.

- (b) Hydraulic hoists, pits, and all lubrication, greasing automobile washing, and repair equipment shall be entirely enclosed within a building.
4. Access Drives. No more than two (2) driveway approaches shall be permitted directly from any principal or minor arterial nor more than one (1) driveway approach from any other street, each of which shall not exceed thirty-five (35) feet in width at the property line.
    - (a) If the service station or permitted building site fronts on two (2) or more streets, the driveways shall be located as far from the street intersection as practicable, but not less than fifty (50) feet.
    - (b) No driveway or curb cut for a driveway shall be located within ten (10) feet of an adjoining property line and shall be no less than twenty-five (25) feet from any adjacent lot within an "R-1" District as extended to the curb or pavement.
    - (c) Any two (2) driveways giving access to a single street should be separated by an island with a minimum dimension of twenty (20) feet at both the right-of-way line and the curb or edge of the pavement.
  5. Curbing and Paving. A raised curb at least six (6) inches in height shall be erected along all of the street property lines, except at driveway approaches. The entire service area shall be paved with a permanent surface of concrete or asphalt.
  6. Fencing. A solid fence or wall four (4) feet in height shall be erected along all property lines abutting any lot within a residential district.
  7. Signs. Signs shall be allowed as provided for in Section 15.4. No signs, whether permanent or temporary, shall be permitted within the public right-of-way.
  8. Off-Street Parking. Off-street parking shall be provided in conformance with the schedule outlined in Article 16.
  9. Lighting. Exterior lighting shall be so arranged so that it is deflected away from adjacent residential districts and adjacent streets. The height of lighting shall not exceed twelve (12) feet when located within two hundred (200) feet of a residential district and further may not exceed a height of sixteen (16) feet otherwise.

Section 17.9 Public parks, playgroups and playfields.<sup>49</sup>

- A. Facilities shall be subject to site plan review to assure compatibility with residential areas.
- B. Any use requiring a structure shall have such structure located on the site as not to be closer than fifty (50) feet to the lot line of any adjacent residential lot.

Section 17.10 Public utility service building or regulator stations.<sup>50</sup>

- A. Such facilities shall not provide outdoor storage yards.

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<sup>49</sup> Section amended by Ordinance 2009-1 Adopted December 8, 2009, Effective December 23, 2009

<sup>50</sup> Sections 17.9 through 17.26 added by Ordinance 2009-1 Adopted December 8, 2009, Effective December 23, 2009

- B. It shall be shown that operating requirements necessitate locating said facilities within the district in order to serve the immediate vicinity
- C. Adequate screening of facilities shall be provided when such facilities abut residential property.

Section 17.11 Personal services and small retail business serving permitted uses.

- A. Establishment or place of business shall be primarily engaged in the provision of frequent or reoccurring needed services of a personal nature. Typical uses may include, but are not limited to; beauty and nail salons barber shops, shoe repair shops, tailor shops, Laundromats, and dry cleaners.
- B. Locations for facilities shall be such that they do not impact abutting principal uses permitted in the district.

Section 17.12 Rooming and boarding houses.

- A. Off street parking on the site for not less than two (2) cars for the permanent residents of the dwelling plus not less than one (1) on site space for each person rooming or boarding at the dwelling.
- B. All codes and ordinance of the City and State shall be complied with.

Section 17.13 Temporary uses such as displays.

- A. See Section 11.4B.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.14 Other principal uses similar to permitted principal uses.

- A. See Section 11.4C.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.15 Adult Entertainment facilities.

- A. See Section 11.4D.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.16 Arcade and other places of amusement.

- A. See Section 11.4E.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.17 Apartment for residence within a business building.

- A. See Section 11.4F.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.18 Restaurants and Taverns.

- A. See Section 12.4A.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.19 Junk Yards.

- A. See Section 12.4B.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.20 Hazardous Material disposed.

- A. See Section 13.4A.
- B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

Section 17.21 Marine Terminal.

- A. See Section 13.4B.

B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.  
Section 17.22 Mobile Home Parks.

A. See Section 14.4B.

B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.  
Section 17.23 Townhouse, apartments and condominiums.

A. See Section 14.4C.

B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.  
Section 17.24 Wholesale and warehouse distributions facilities.

A. See Section 14.4D.

B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.  
Section 17.25 Light Industrial Establishment.

A. See Section 14.4E.

B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.  
Section 17.26 Construction and fabrication facilities for contractors.

A. See Section 11A.4.

B. See requirements of this Article 17, Section 17.1, 17.2, and 17.3 apply.

**Section 17.27. Medical Marihuana Dispensaries.<sup>51</sup>**

A. See Section 11A.4.

B. See requirements of the Article 17, Section 17.1, 17.2, and 17.3.

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<sup>51</sup> Section added by Ordinance 2011-01 Adopted May 10, 2011, Effective May 25, 2011

ARTICLE 18  
ADMINISTRATION

Section 18.1 General Requirements

The provisions of this Ordinance shall be administered by the Planning Commission, the Board of Zoning Appeals, and the City Council in conformance with applicable State of Michigan enabling legislation.

- A. Responsibility: The City Manager with the approval of the City Council shall employ a Zoning Administrator to act as its officer to effect proper and adequate administration of this Ordinance. The City Manager may designate the Building Inspector or other administrative officer, as the Zoning Administrator. The term of employment, compensation, and any other conditions of employment shall be established by the City Council. For the purposes of this Ordinance, the Zoning Administrator shall have the power of a police officer.
- B. Duties of Zoning Administrator:
1. All applications for permits or certificates shall be submitted to the Zoning Administrator who may issue Certificates of Occupancy when all applicable provisions of this Ordinance have been met. The Zoning Administrator shall be empowered to make inspections of buildings or premises to carry out his duties in the enforcement of this Ordinance.
  2. The Zoning Administrator shall record all non-conforming uses existing at the effective date of this Ordinance for the purpose of carrying out the provisions of Section 6.2 of this Ordinance.
  3. Under no circumstances is the Zoning Administrator permitted to make changes in this Ordinance or to vary the terms of this Ordinance in carrying out his duties.
- C. Sign Permit: Prior to the construction, erection or structural alteration of a sign, a permit shall be obtained from the City Clerk in accordance with Title V, Chapter 3 Section 5.40 of the City of Essexville Code of Ordinances. Application shall be on a standard prepared form obtained from the City Clerk.
- D. Zoning Permit: Prior to the construction, erection or structural alteration of any of the following, a zoning permit shall be obtained:<sup>52</sup>
- a. Any accessory building or structure used as tool and storage sheds, playhouses and similar uses.
  - b. Fences of any size or height.
  - c. Sidewalks or driveways within the public right-of-way.
  - d. Prefabricated swimming pools installed entirely above ground.
  - e. Temporary motion picture, television and theater stage sets and scenery located outside of a building.
  - f. Retaining walls.

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<sup>52</sup> Section added by Ordinance 2001-01 Adopted October 9, 2001, Effective October 26, 2011

Application for such Zoning Permit shall be on a standard form furnished by the City of Essexville. Requirement to obtain a Zoning Permit shall be in addition to any other permits required by the City Code or ordinance, if any.

E. Certificate of Occupancy: A Certificate of Occupancy shall be obtained from the Zoning Administrator for any of the following:

1. Occupancy and use of vacant land (including parking lot construction) or of a building hereafter erected or structurally altered.
2. Change in the use of land or building, except to another use which represents a continuation of a use under a previous Certificate of Occupancy.
3. Any change in use or enlargement of a non-conforming use or building.

F. Application for Building Permit and Certificate of Occupancy:

1. Application. A Building Permit shall be required for the construction, alteration or removal of any building or structure. Application for a Building Permit and Certificate of Occupancy shall be made within a period of thirty (30) days prior to the time when a new, changed or enlarged use of a building, structure or premise is intended to begin.
2. Information Required. Application for a Building Permit and Certificate of Occupancy shall be accompanied, in triplicate, by an approved site plan conforming to Article 6 and such other information as may be deemed necessary by the Zoning Administrator for the proper enforcement of this Ordinance.
3. Accessory Buildings or Structures. Accessory buildings or structures, when erected at the same time as the principal building or structures on a lot shown on the application therefor, shall not require a separate Certificate of Occupancy.
4. Record of Application. A record of all such applications for Building Permits and Certificate of Occupancy shall be kept on file by the Zoning Administrator. Whenever the building, structure, premise and uses thereof as set forth on the application are in conformity with the provisions of this code and other applicable regulations, it shall be the duty of the Building Inspector to issue any necessary Building Permit and when such permit is denied, to state refusal in writing, with cause.
5. Issuance of Certificate of Occupancy. After notification that the building, structure or premises, or part thereof is ready for occupancy and inspection, the Zoning Administrator shall make final inspection thereof and if all provisions of this code and other applicable regulations have been complied with, he shall issue a Certificate of Occupancy which shall show such compliance. When a Certificate of Occupancy is denied on the grounds of a zoning violation, such refusal shall be stated in writing with reasons for said denial.

A temporary Certificate of Occupancy may be issued by the Zoning Administrator for a part of a building or structure or premises prior to completion of the entire building, structure or premise, PROVIDED it is sufficiently clear all provisions of this Ordinance will be met.

6. Date of Establishment of Legal Non-conforming Uses.

- (a) Application for a Certificate of Occupancy shall be made to the Zoning Administrator within ninety (90) days of the date of the enactment of this code for any existing use of a building, structure or premises at the time of passage of this Ordinance; and to determine the date of establishment of such uses for the purpose of Article 6, Section 6.2 of this Ordinance.
- (b) The Zoning Administrator shall certify, after proper examination the extent and kind of use and whether or not the use conforms to district requirements. Failure to file such application shall place the burden of proof as to the date of establishment of any use upon the owner.

**Section 18.2 Enforcement**

The Zoning Administrator shall enforce the provisions of this Ordinance.

- A. Violation and Penalties: Violations of any provisions of this Ordinance are declared to be a nuisance - per se. Any and all building or land use activities considered possible violations of the provisions of this Ordinance observed by or communicated to an official or employee shall be reported to the Zoning Administrator.
  - 1. Inspection of Violation. The Zoning Administrator shall inspect each alleged violation or violations he observes or is aware of and shall order correction in writing, of all conditions found to be in violation of this Ordinance.
  - 2. Correction Period. All violations shall be corrected within a period of thirty (30) days after the order to correct is issued or in such longer period of time, not to exceed six (6) months, as the Zoning Administrator shall determine necessary and appropriate. A violation not corrected within this period shall be reported to the City Attorney who is hereby authorized to and shall initiate procedures to eliminate such violation.
  - 3. Penalties. Every person, whether as principal, agent, servant, employee or otherwise, including the owners of any building, structure( or premise or part thereof where any violation of this Ordinance all exist or shall be created; who shall violate or refuse to comply with any of the provisions of this code, shall be guilty of maintaining a nuisance - se and upon conviction thereof shall be punished by a fine of not more than five hundred (\$500) dollars or by imprisonment for a term of not to exceed ninety (90) days, or by both such fine and imprisonment, within the discretion of the Court; for each and every day the violation continues beyond the permissible grace period, a separate offense shall be declared.
  - 4. Cumulative Rights and Remedies. The rights and remedies provided herein are cumulative and in addition to any other remedies provided by law.

**Section 18.3 Amendment<sup>53</sup>**

- A. City Council may amend the regulations and provisions stated in the text of this Ordinance and the boundaries of zoning districts shown on the current Zoning Map in accordance with the below stated amendment procedures. If the stated amendment procedure becomes in conflict with or is in conflict with the applicable

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<sup>53</sup> Section amended by Ordinance 2009-1 Adopted December 8, 2009, Effective December 23, 2009

zoning enabling legislation of the State of Michigan, then the procedure required by the State of Michigan shall be controlling.

B. Initiation of Amendments: Proposals for amendments, supplements, or changes may be initiated by the City Council of its own action by written notice to the Planning Commission, by the Planning Commission itself, or by petition of one (1) or more owners, or their agents, of property to be affected by the proposed amendment.

C. Amendment Procedures:

1. Filing of Applications. All petitions for amendments to this Ordinance shall be in writing, signed and filed in triplicate with the City Clerk for presentation to the City Council. A fee, as established by the City Council, shall be paid at the time of application to cover costs of necessary advertising, for public hearings, for use of a standard amendments sign and investigation of the amendment request. The City Council shall transmit the application to the Planning Commission for recommended action.
2. Referral of Petition to Planning Commission. The Planning Commission shall consider each petition for amendment in terms of its own judgment on particular factors related to the individual petition and in terms of the likely effect of such proposal upon the Development Plan for the Community.

Following the required public hearing, the Planning Commission shall transmit a summary of comments received at the hearing, including zoning maps and recommendations, to the City Council.

D. Notice of Public Hearing for zoning text or map changes

1. If an individual property or ten (10) or fewer adjacent properties are proposed for rezoning on the zoning map, a notice of the proposed public hearing shall be given as follows:
  - (a) Notice of public hearings shall be published in a newspaper of general circulation in Essexville.
  - (b) Notice shall also be sent by mail or personal delivery to the applicants/owners of property for which approval is being considered.
  - (c) Notice shall also be sent to all persons to whom real property is assessed within three hundred (300) feet of the property and to the occupants of all structures within three hundred (300) feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction.
  - (d) 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 individual, partnerships, businesses or organization, one (1) occupant of each unit or spatial area shall receive notice. Structures with more than four (4) dwelling units need to have only one (1) notice sent to such structure.
  - (e) If the name of the occupant is not known, the term "occupant" may be used in making notification.

- (f) A notice must be deposited during normal business hours for delivery by the US postal service or to other public or private delivery service.
  - 2. The notice shall be given not less than fifteen (15) days before the date the application will be considered for approval.
  - 3. The notice shall state the following:
    - (a) Describe the nature of the request
    - (b) If individual properties are the subject of the request, the notice shall indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist with the property. If there are no street addresses, other means of identification may be used.
    - (c) State when and where the request will be considered
    - (d) Indicate when and where written comment will be received concerning the request.
  - 4. For zoning text amendments only, the notice of the proposed public hearings shall be given in the manner required under D,1,(a); 2; and 3, (a), (c), and (d) above.
  - 5. If eleven (11) or more adjacent properties are proposed for rezoning on the zoning map, the notice of the proposed public hearings, whether by the Planning Commission or the City Council, shall be given in the manner required under D, 1 (notice of public hearings) except for the requirement of Section D,1,(c) and except that no individual addresses of properties are required to be listed under Section D, 3, (b).
  - 6. Notice of the time and place of the public hearings by the Planning Commission shall also be given by mail to each electric gas, and pipeline public utility company, each telecommunication service provider, each railroad operating within the district or zone affected, and the airport manager of each airport, that registers its name and mailing address with the Clerk for the purpose of receiving notice of public hearing.
  - 7. All notices of hearing required under D (notice of public hearings) given by the Planning Commission shall include the places and times at which the text and any maps of the proposed zoning ordinance amendment may be examined.
- E. Zoning amendment review and adoption by City Council
- 1. When Public Hearing Required
    - (a) After receiving a proposed Zoning Ordinance amendment or a recommendation on a proposed amendment from the Planning Commission, City Council may hold a public hearing if it considers it necessary or as may otherwise be required.
    - (b) The City Council shall grant a hearing on a proposed ordinance provision to a property owner who requests a hearing by certified mail, addressed to the City Clerk.
  - 2. Public Notice of Hearing. Notice of a public hearing to be held by the City Council shall be given as required under Section 3 (Notice of Public Hearing)

for Zoning Request or Map Changes) for any zoning text or map amendments.

3. Two Readings Required. There shall be two readings of the proposed amendment as required by the City Charter but only the first reading of the proposed amendment to the ordinance or zoning maps shall require a public hearing after public and private notice as set forth herein.
  4. Decisions. After a public hearing when held as allowed under this section, the City Council shall consider and vote upon the adoption of an amendment to this Ordinance, with or without modification. A zoning amendment and any modifications shall be approved by a majority vote of the members of the City Council.
  5. Resubmittal. No application for a rezoning, which has been denied by the City Council, shall be resubmitted for a period of one (1) year from the date of the last denial, except on grounds of newly discovered evidence or proof of changed conditions found upon inspection by the City Council to be valid.
- F. Effect of Protest to Proposed Amendment. Upon presentation of a protest petition meeting the requirements of this subsection, an amendment to a zoning ordinance which is the object of the petition shall be passed only by a  $\frac{2}{3}$  vote of the City Council, unless a larger vote, but not to exceed a  $\frac{3}{4}$  vote, is required by ordinance or charter. The protest petition shall be presented to the City Council before final legislative action on the amendment, and shall be signed by one of the following:
1. The owners of at least 20% of the area of land included in the proposed change.
  2. The owners of at least 20% of the area of land included within an area extending outward 100 feet from any point of the boundary of the land included in the proposed change.
  3. For purposes of calculation of this subsection, publicly owned land shall be excluded in calculating 20% land area requirement.
- G. Notice of Adoption. Within fifteen (15) days following adoption of an ordinance or an amendment by the City Council, a Notice of Adoption, containing the information specified in this new section, must be published in a newspaper of general circulation in the City. Said Notice shall include the following information:
1. For newly adopted Ordinances, the following statement: "A Zoning Ordinance regulating the development and use of land has been adopted by the City Council of the City of Essexville."
  2. For amendment to existing Ordinance, a summary of the regulatory effect of the amendment or the text of the amendment.
  3. The effective date of the Ordinance.
  4. The place and time where a copy of the Ordinance may be purchased or inspected.

## Section 18.4 Board of Zoning Appeals<sup>54</sup>

### A. Creation and Membership

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<sup>54</sup> Section amended by Ordinance 2009-1 Adopted December 8, 2009, Effective December 23, 2009

1. The Board of Zoning Appeals shall consist of five (5) members who shall be appointed by the City Council and have the duties, responsibilities and powers that are provided for them by Act 110 of the Public Acts of the State of Michigan for 2006, and as hereafter amended. One (1) appointed member of the Planning Commission shall be appointed by the City Council.

Two alternate members shall also be appointed who shall serve in the place of any member at any meeting or hearing wherein any member is unable to be present.

Each member shall be appointed for a term of three (3) years. After the effective date of this amendment, the City Council shall adjust the number of members by accepting the resignations of as many members as is necessary to reduce their number to five and by appointing as many resigned members or others as necessary to be alternates. Upon the expiration of the terms of the remaining members, reappointments or appointments of new members shall be made for three year term. Appointment of terms for subsequent years shall be effective on January 1.

Any alternate still in office on the effective date of this amendment shall continue to serve the remainder of his or her term. Any additional alternates to raise its number to two shall be appointed for a period from the time of appointment until the next January 1 where upon appointments thereafter will be for terms of three years.

#### B. Organization and Procedures

1. Rules of Procedure. The Board of Zoning Appeals shall adopt its own rules of procedure as may be necessary to conduct its meetings and carry out its function. The Board shall choose Chairperson, a Vice Chairperson to serve in his or her absence and a recording secretary.
2. Meetings. Meetings shall be held at the call of the chairman and at such times as the Board of Zoning Appeals may determine. All meetings by the Board of Zoning Appeals shall be open to the public and shall be subject to the requirements of the Michigan Open Meetings Act.
3. Records. Minutes shall be recorded of all proceedings which shall contain evidence and dates relevant to every case considered together with the votes of the members and the final disposition of each case. Such minutes shall be filed in the office of the City Clerk and shall be made available to the general public.
4. Counsel. The City Attorney shall act as legal counsel for the Board of Zoning Appeals and shall be present at all meetings upon request by the Board of Zoning Appeals or at the direction of the City Council.
5. Hearings. When a notice of appeal has been filed in proper form with the Board of Zoning Appeals, through the City Clerk, the Board shall immediately place the said request for appeal on the calendar for hearing, and shall cause notices stating the time, place and object of the hearing to be served, personally or by mail, addressed to the parties making the request for appeal, at least fifteen (15) days prior to the date of the scheduled hearing. All notices shall be sent to the addressee stated on the application form.

Interested persons may appear and testify at the hearings. A party may appear in person, by an agent or by attorney. However, in order for an agent

to be recognized, an agent may present a notarized statement signed by the petitioning party that the agent is appointed by them to speak and to make binding decisions on their behalf at the hearing. Attorneys, if unknown to the Board, may be requested to display their state bar card to indicate their authority to act on a petitioning party's behalf.

The Board of Zoning Appeals may recess such hearings from time to time, and, if the time and place of the continued hearing be publicly announced at the time of adjournment of the Board hearing, no further notice shall be required. The Board shall give due notice to all property owners within three hundred (300) feet of the property affected, said notice being given at least fifteen (15) days before the hearing date.

6. Decisions. The Board of Zoning Appeals shall return a decision upon each case within thirty (30) days after a request or appeal has been filed unless a further time is agreed upon with the parties concerned. Any decision of the Board of Zoning Appeals shall not become final until the expiration of five (5) days from the date of entry of such order, unless the Board of Zoning Appeals shall find the immediate effect of such order is necessary for the preservation of property or personal rights and shall so certify on the record.
7. Quorum and Majority Vote. The Zoning Board of Appeals shall not conduct business unless a majority of its regular members are present but need not have a total of five members or alternates present in order to do so. For a petition to be granted or other action to be taken by the Zoning board of Appeals, three affirmative votes shall be required of the members and alternates then present. However, the concurring vote of four of the members or alternates then present shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which they are required to pass under this Ordinance or to effect any variation in the Ordinance.

### C. Appeals

1. Filing of Appeals. Appeals to the Board of Zoning Appeals may be made by any person aggrieved, or by any officer, department, or board of the City government.  

Any appeal from the ruling of the Zoning Administrator concerning the enforcement of the provisions of this Ordinance may be made to the Board of Zoning Appeals, through the City Clerk, within ten (10) days of the Zoning Administrator's decision if delivered by personal service and eleven (11) days of first class mailing. Such appeal shall be filed with the Zoning Administrator and shall specify the grounds for the appeal. The City Clerk shall immediately transmit to the Secretary of the Board of Appeals papers constituting the record upon which the action appealed from was taken. The City Clerk shall forward a copy of the notice of appeal to the Zoning Administrator.
2. Stay. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Zoning Appeals after notice of appeal has been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board of Zoning Appeals or, on application, by a court of record.

3. Fees. A fee as established by the City Council shall be paid to the City Treasurer at the time of filing application with the Board of Zoning Appeals. The purpose of such fee is to cover, in part, the necessary advertisements, investigations, fees of the Board members, and other expenses incurred by the Board of Zoning Appeals in connection with an appeal. The City Council shall determine the fee to be paid for the Board of Appeals members.
- D. Duties and Powers The Board of Zoning Appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms or intent of this Ordinance, but does have power to act on those matters where this Ordinance provides for an administrative review, interpretation, variance exception, temporary or conditional approval permit as defined in this Section.
1. Review. The Board of Zoning Appeals shall hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Zoning Administrator or by any other official in administering or enforcing any provisions of this Ordinance.
  2. Interpretation. The Board of Zoning Appeals shall have the power to:
    - (a) Interpret, upon request, the provision of this Ordinance in such a way as to carry out the intent and purpose of the Ordinance.
    - (b) Determine the precise location of the boundary lines between zoning districts.
    - (c) Classify a use or an accessory use customarily incidental to the principal use, which is not specifically mentioned as part of the use regulations of any zoning district so that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each district.
    - (d) Determine the off-street parking and loading space requirements of any use not specifically mentioned in Article 16.
    - (e) Determine if a change in a non-conforming use is more detrimental than the existing use, in accordance with Article 6.
    - (f) Hear appeals with regard to decisions on the issuance of Special Land Use Permits as governed by this Ordinance.
    - (g) Hear appeals with regard to area, height, bulk and placement regulations for planned unit developments as governed by this Ordinance.
    - (h) Determine those matters set forth above but specifically shall not have the power to permit, vary, alter or modify the uses or activities allowed in any zoning district as set forth in this ordinance or by law.
  3. Variances The Board of Zoning Appeals shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, PROVIDED all of the BASIC conditions listed herein and any ONE of the SPECIAL conditions listed thereafter can be satisfied.

- (a) Basic Conditions. That any variance granted from this Ordinance:
    - (1) Will not be contrary to the public interest or to the intent and purpose of this ordinance.
    - (2) Shall not permit the establishment within a district of any use which is not permitted by right within that zone district, or any use or dimensional variance for which a conditional use permit is required.
    - (3) Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.
    - (4) Is not one where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.
    - (5) Will relate only to property that is under control of the applicant.
  - (b) Special Conditions. When ALL of the foregoing basic conditions can be satisfied, a variance may be granted when any ONE of the following special conditions can be clearly demonstrated.
    - (1) Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.
    - (2) Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.
    - (3) Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.
4. Rules The following rules shall be applied in the granting of variances:
- (a) The Board of Zoning Appeals may specify, in writing, such conditions regarding the character, location; and other features that will in its Judgment, secure the objectives and purposes of this Ordinance. The breach of any such condition shall automatically invalidate the permit granted.
  - (b) Each variance granted under the provisions of this Ordinance shall become null and void unless:
  - (c) The construction authorized by such variance or permit has been commenced within six (6) months after the granting of the variance.
  - (d) The occupancy of land, premises, or buildings authorized by the variance has taken place within one (1) year after the granting of the variance.

- (1) No application for a variance which has been denied wholly or in part by the Board of Zoning Appeals shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Board to be valid.
  - (2) An appeal from a decision of the Board of Zoning Appeals must be filed within thirty (30) days after the Board of Zoning Appeals issues its decision in writing (signed by the Chairperson or member of the Board of Zoning Appeals), or within twenty (20) days after the Board of Zoning Appeals approves its minutes.
5. Special Exceptions When, in its judgment, the public welfare will be served and the use of neighboring property will not be injured thereby, the Board of Zoning Appeals may, in a specific case, after due notice and public hearing and subject to appropriate conditions and safeguards, determine and vary the application of the regulations of this Ordinance in harmony with the general character of the district and the intent and purpose of this Ordinance. The granting of a special exception shall in no way constitute a change in the basic uses permitted in the district affected nor on the property wherein the exception is permitted. The Board of Zoning Appeals may issue a conditional permit as special exception for the following land and structure uses.
6. Temporary Permits Uses other than residential may obtain a temporary permit for the erection or placement of a temporary building or structure to be used for the operation of the principal use during construction of the principal building, subject to the following conditions:
  - (a) A permit must have been issued for the principal building and use.
  - (b) Application for the temporary permit and use shall be requested from the Zoning Administrator who shall determine the feasibility of the use.
  - (c) The application must state that the proposed temporary building and its use will be vacated and removed upon expiration of a specific time limit not to exceed twelve (12) months.
  - (d) The Zoning Administrator may impose any reasonable conditions in addition to the district requirements in which the use is proposed, including setbacks, land coverage, off-street parking, landscaping and other requirements deemed necessary to protect adjoining properties and the public welfare. The violation of any such condition shall automatically invalidate the permit.
7. Conditional Permits When conditions exist that are unique to a particular situation, a conditional permit may be issued with specific limitations imposed by the Board of Zoning Appeals. The land or structure uses may be permitted to be established and to continue in use as long as the unique conditions to the use exist.

The permit may be canceled when the conditions upon which the permit was issued cease to exist. The permit issued shall contain all the specified conditions under which continued use may be allowed. Conditional permits may be issued for the following uses:

- (a) The Board of Zoning Appeals may authorize a reduction, modification, or waiver of any of the off-street parking or off-street loading regulations in Article 16, when it can be demonstrated that circumstances of extreme practical difficulty exist that would unquestionably result in hardship to the applicant when a literal interpretation of the regulations is required.

Hardship shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land. A hardship that is a result of any action of the applicant shall not be considered by the Board of Zoning Appeals. Under all these circumstances, in no case shall the off-street parking or off-street loading standards be reduced by more than twenty-five (25%) percent.

- (b) Joint use of off-street parking areas may be authorized when the capacities outlined in Article 16, Section 16.1, are complied with and when a copy of an agreement between joint users shall be filed with the application for a building permit, and is recorded with the Register of Deeds of Bay County, guaranteeing continued use of the parking facilities for each party.
- (c) Other "Conditional Uses" based upon a finding of fact by the Board of Zoning Appeals that indicate conditions exist that are unique to a particular situation, however, not contrary or in contradiction to the intent of the District within which the proposed use is located. Conditions imposed shall do the following:

- (1) 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, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
- (2) Be related to the valid exercise of the police power and purposes that are affected by the proposed use or activity.
- (3) Be necessary to meet the intent and purpose of the zoning regulations; 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.

Conditional uses shall be based upon a finding of fact by the Board of Zoning Appeals that indicates conditions exist that are unique to a particular situation, however, not contrary or in contradiction to the intent of the district within which the proposed use is located.

8. Bond for Compliance In authorizing any variance, or in granting any conditional, or special approval permits, the Board of Zoning Appeals may require that a bond of ample sum, but not to exceed the cost of the project, be furnished to ensure compliance with requirements, specifications and conditions imposed with the grant of variance. A certified check or surety bond shall be deposited with the City Clerk and returned upon certification of completion by the Zoning Administrator.

ARTICLE 19  
REPEALS

Section 19.1 Other Ordinances

All ordinances and parts of ordinances inconsistent with the provisions and regulations of this Ordinance are hereby amended to conform to the provisions and regulations of this Ordinance to the extent of such inconsistency or conflict.

Section 19.2 Licenses

Nothing herein contained shall be deemed to repeal or amend any ordinance requiring a permit or license or both to cover any business.

ARTICLE 20  
SEVERABILITY AND EFFECTIVE DATE

Section 20.1 Severance Clause

Should any section, clause or provision of this Ordinance be declared by the courts to be invalid, the same shall not affect the validity of this Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 20.2 Effective Date

This Ordinance shall become effective on May 24, 1983 Approved by the City Council on May 10, 1983

Section 20.3 Repeal

The Essexville Zoning Ordinance adopted June 13, 1966, as amended, is hereby repealed on the date this Ordinance, which the City of Essexville adopted: on May10, 1983, becomes effective, May 24, 1983.

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