

# PART ELEVEN - PLANNING AND ZONING CODE

## TITLE ONE - Subdivision Regulations

- Chap. 1101. Purpose; Intent; Jurisdiction.
- Chap. 1105. Definitions.
- Chap. 1109. Procedure for Subdivision Approval.
- Chap. 1113. Design Standards.
- Chap. 1117. Uniform Improvement Requirements.
- Chap. 1121. Administration and Enforcement.

## TITLE THREE - Zoning Administration

- Chap. 1131. General Provisions.
- Chap. 1133. Definitions.
- Chap. 1135. Administration and Enforcement.
- Chap. 1136. Zoning Certificates.
- Chap. 1137. Variances, Exceptions and Appeals.
- Chap. 1139. Amendments.
- Chap. 1141. Site Plan Review.

## TITLE FIVE - Zoning Districts and Regulations

- Chap. 1151. District Establishment and Map.
- Chap. 1153. R-1 Residential District.
- Chap. 1154. R-2 Residential District.
- Chap. 1155. R-3 Residential District.
- Chap. 1157. R-4 Residential District.
- Chap. 1159. R-5 Residential District.
- Chap. 1160. R-6 Residential Open Space Planned Development District.
- Chap. 1161. C-3 General Commercial District.
- Chap. 1163. C-4 Automotive Oriented Commercial District.
- Chap. 1165. C-5 Highway Interchange Commercial District.
- Chap. 1167. I-1 Industrial District.
- Chap. 1175. Design Control Overlay District (DOCD).
- Chap. 1177. Recognized Heritage Structures and Design Criteria.

## TITLE SEVEN - Supplemental Zoning Regulations

- Chap. 1181. Fences and Walls.
- Chap. 1183. Sign Regulations.
- Chap. 1185. Nonconforming Uses.
- Chap. 1187. Off-Street Parking and Loading Regulations.
- Chap. 1189. Conditional Uses.
- Chap. 1190. Riparian Setbacks.
- Chap. 1191. Supplemental Regulations.
- Chap. 1192. Management, Administration and Control of the Use of the City's Public Rights-of-Way.
- Chap. 1193. Wireless Communications Towers and Antennae.
- Chap. 1194. Flood Damage Reduction.
- Chap. 1195. Erosion and Sediment Control.
- Chap. 1196. Illicit Discharge and Illegal Connection Control.
- Chap. 1199. Violation, Remedies and Fees.

### CODIFIED ORDINANCES OF TALLMADGE

### PART ELEVEN - PLANNING AND ZONING CODE

#### TITLE ONE - Subdivision Regulations

- Chap. 1101. Purpose; Intent; Jurisdiction.
- Chap. 1105. Definitions.
- Chap. 1109. Procedure for Subdivision Approval.
- Chap. 1113. Design Standards.
- Chap. 1117. Uniform Improvement Requirements.
- Chap. 1121. Administration and Enforcement.

#### CHAPTER 1101

#### Purpose; Intent; Jurisdiction

- 1101.01 Official name.**
- 1101.02 Purpose.**
- 1101.03 Authority.**
- 1101.04 Effective date.**
- 1101.05 Interpretation.**
- 1101.06 Application.**

#### CROSS REFERENCES

- Plat approval required - see Ohio R.C. 711.09
- Purpose of Zoning regulations - see P.& Z. 1131.03

**1101.01 OFFICIAL NAME.**

The official name of Title One of Part Eleven - Planning and Zoning Code shall be "Subdivision Regulations for the City of Tallmadge, Ohio" and they shall be referred to as such or herein as "these regulations".

(Ord. 107-78. Passed 11-9-78.)

**1101.02 PURPOSE.**

These regulations are adopted to secure and provide for the following objectives:

- (a) To establish standards for logical, sound and economical development of the City.
- (b) To prevent premature subdivisions that have inadequate water supply, drainage, sewage facilities or other public service and which may impose later expenditure of public funds to correct.
- (c) To provide adequate and convenient spaces for traffic, utilities, access of fire-fighting apparatus, recreation, light and air, and the avoidance of congestion of the population.
- (d) To require and secure all improvements such as pavements, sidewalks, sanitary sewers, storm sewers and water lines in accordance with the specifications of the City.
- (e) To coordinate the arrangement of streets or highways in a manner which will promote safe and convenient vehicular and pedestrian movements and insuring the proper design of new streets in relationship to existing or proposed highways and the thoroughfare plan.
- (f) To provide for the equitable handling of all subdivision plats by providing uniform procedures and standards for observance by both the approving authority and subdivider.
- (g) To promote the public health, safety, comfort, convenience, prosperity and general welfare of the present and future population.

(Ord. 107-78. Passed 11-9-78.)

**1101.03 AUTHORITY.**

The authority for the preparation, adoption and implementation of these regulations is derived in accordance with the Ohio Revised Code as follows:

- (a) Ohio R.C. 713.01 provides for the establishment of a Planning Commission.
- (b) Ohio R.C. 713.03 provides for the Planning Commission to be the Platting Commission.
- (c) Ohio R.C. Ch. 711 provides for the adoption of uniform rules and regulations governing the subdivision of land.

(Ord. 107-78. Passed 11-9-78.)

**1101.04 EFFECTIVE DATE.**

These regulations shall be effective after adoption by Council and certification to the Recorder of Summit County, Ohio. Upon becoming effective, any other subdivision regulations previously adopted by the City, which governs plats and the subdivision of land within its jurisdiction, and all amendments thereto, are hereby repealed. These regulations shall not be retroactive, neither shall they affect any subdivision plat approved by the Planning Commission prior to the effective date.

(Ord. 107-78. Passed 11-9-78.)

**1101.05 INTERPRETATION.**

The provisions of these regulations shall be construed to be minimum requirements and are not intended to interfere with any other existing provisions of the law or other existing City regulations. Whenever these regulations may impose greater restriction, these regulations shall control.

(Ord. 107-78. Passed 11-9-78.)

**1101.06 APPLICATION.**

These regulations are applicable to all subdivisions hereinafter made of land located within the jurisdiction of the City.

(Ord. 107-78. Passed 11-9-78.)

**CHAPTER 1105**

**Definitions**

**1105.01 Intent.**

**1105.02 General terms.**

**1105.03 Specific terms.**

**CROSS REFERENCES**

Plat and subdivision defined - see Ohio R.C. 711.001

General definitions - see ADM. 101.02

Zoning definitions - see P.& Z. Ch. 1133

**1105.01 INTENT.**

Throughout these regulations, the following terms shall have the meaning given in this chapter. (Ord. 107-78. Passed 11-9-78.)

**1105.02 GENERAL TERMS.**

- (a) "Person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.
- (b) Words used in singular include the plural and plural shall include singular.
- (c) Words used in the present tense include the future tense.
- (d) "Shall" is a mandatory requirement and the words "may" and "should" are permissive and preferred requirements. (Ord. 107-78. Passed 11-9-78.)

**1105.03 SPECIFIC TERMS.**

(1) "Building" means a permanently located structure having a roof, built or occupied as a shelter or enclosure for persons, animals, or property, and when separated by a fire wall, each such separate portion of such structure shall be deemed a separate building.

(2) "Building Line" means a line defining the minimum front, side and rear land requirements in which no building or structure may

be located.

- (3) "City Council" means the City Council of the City of Tallmadge.
- (4) "City Engineer" means a person or firm designated by the City as engineer who is authorized to practice engineering in the State of Ohio.
- (5) "County Soil and Water Conservation District" means the Soil and Water Conservation District of Summit County.
- (6) "Commission". See "Planning Commission".
- (7) "Condominium" means joint ownership of real estate, including land, structures and improvements.
- (8) "Condominium property" means and includes the land, together with all buildings, improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property which have been submitted pursuant to the provisions of the Ohio R.C., Chapter 5311, which applies only to property which is specifically submitted to its provisions by the execution and filing for record of a declaration by the owner thereof. For purposes of these regulations, the improvement of a parcel or parcels of land, which is to be ultimately jointly-owned under a condominium declaration, is a subdivision under the terms of these regulations herein prior to the actual recording at the applicable condominium declaration.
- (9) "Culvert" means a transverse drain that channels under a bridge, street or driveway.
- (10) "Easement" means a grant by the property owner for the use of a strip of land by the public, a corporation or other persons for specific purposes.
- (11) "Engineer" means a registered engineer authorized to practice civil engineering as defined by the Registration Act of the State of Ohio.
- (12) "Improvements" means grading, draining, sanitary and storm sewers, water mains, pavement, curbs and gutters, sidewalks, street signs, street lights, parks, monuments and the appropriate appurtenances required to render land suitable for the use proposed.
- (13) "Lot" means a parcel of land occupied or capable of being occupied by one or more buildings and the accessory buildings customarily incident to it, including such open spaces as are required by these regulations.
- (14) "Lot area, net" means the total horizontal area included within the rear, side and front lot lines of the lot excluding any street or highway, whether dedicated or not dedicated to public use, but including off-street automobile parking areas and other accessory uses.
- (15) "Lot, corner" means a lot at the point of intersection of and abutting on two or more intersecting streets. The angle of intersection being not more than 135 degrees.
- (16) "Lot, depth of" means the mean distance from the right-of-way line of the street at the front of the lot to its opposite rear line measured in the general direction of the side lines of the lot. Where a major thoroughfare or collector thoroughfare is designated on the Land Use and Thoroughfare Plan then the lot depth shall be measured from the proposed right-of-way line of the designated major thoroughfare or collector thoroughfare. Where the right-of-way is not established, it shall be assumed to be sixty feet.
- (17) "Lot, double frontage" means a lot, other than a corner lot that abuts more than one street.
- (18) "Lot, front of" means an interior lot's frontage shall be a line separating the lot from the street. A corner lot's frontage shall be either street line separating the lot from the street.
- (19) "Lot lines" mean the lines defining the limits of a lot.
- (20) "Lot, width of" means the width measured along the minimum building setback line.
- (21) "Monuments" means permanent concrete or iron markers used to establish definitely all lines of the plat of a subdivision, including all lot corners, boundary line corners, and points of change in street alignment.
- (22) "Official filing" means the submission of a preliminary or final plat of a major or minor subdivision which meets all of the requirements as prescribed by these regulations.
- (23) "Open space" means an area of land which is in its natural state, or is developed only for the raising of agricultural crops, or for public outdoor recreation.
- (24) "Original tract" means a contiguous quantity of land held in common ownership which has not been platted by the existing owner or owners.
- (25) "Out lot" means property shown on a subdivision plat outside of the boundaries of the land which is to be developed and which is to be excluded from the development of the subdivision.
- (26) "Pedestrian walkways" mean a dedicated public right-of-way limited to pedestrian use.
- (27) "Planned Unit Commercial Development" means a large scale commercial development designed and built for the convenience of the consumer by providing centralized shopping and services in one location by different businesses. Such development may be of a single unit, strip or mall-type construction.
- (28) "Planned Unit Rental Development" means a group or cluster of three or more two-family or multi-family dwellings developed primarily for the purpose of rental and having common courts or open spaces or common recreational facilities.
- (29) "Planning Commission" means the City of Tallmadge Planning Commission.
- (30) "Plat, final" means a final tracing of all or a portion of a major subdivision and which, if approved, permits proceeding with the preparation of the final plat.
- (31) "Plat, preliminary" means a drawing for the purpose of study of a major subdivision and which, if approved, permits proceeding with the preparation of the final plat.
- (32) "Public utility" means any person, firm or corporation, governmental agency or board having a public utility commission permit to furnish to the public, under regulations, electricity, gas, sewer, water, telephone, transportation, steam or other similar public services.
- (33) "Right of way" means the width between property lines of a street, pedestrian walkway, or easement.
- (34) "Street, private" means a roadway which affords principal means of access to abutting property, but which has not been dedicated or deeded to the public.
- (35) "Street, cul-de-sac" means a local street having one end open to vehicular traffic and the other end permanently closed with a vehicular turnaround.
- (36) "Street, dead end" means a street temporarily having only one outlet for vehicular traffic, but intended to be extended or continued in the future and provided with a vehicular turnaround on a temporary easement.
- (37) "Subdivider" means any individual, firm, association, corporation, trust or any legal entity, including agents, commencing proceedings under these regulations to subdivide land.
- (38) "Subdivision" means the division of any parcel of land shown as a unit or as contiguous units, into two or more parcels, sites, or

lots, any one of which is less than five acres for the purpose, whether immediate or future, of transfer of ownership, provided, however, that the division or partition of land into parcels of more than five acres not involving any new streets or easements of access, and the sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building sites, shall be exempted, or the improvement of one or more parcels of land for residential, commercial, or industrial structures or groups of structures involving the division or allocation of land for the opening, widening, or extension of any street or streets, except private streets serving industrial structures; the division or allocation of land as open spaces for common use by owners, occupants or lease holders or as easements for the extension and maintenance of public sewers, water, storm drainage, or other public facilities.

(39) "Subdivision, condominium" means a subdivision, as defined herein, and which is ultimately to be jointly-owned under the provision of a recorded condominium declaration.

(40) "Subdivision, major" means any subdivision that does not meet the requirements of a minor subdivision.

(41) "Subdivision, minor" means a division of a parcel of land along an existing public street or road, not involving the opening, widening or extension of any street or road, and involving not more than five lots, any one of which is less than five acres, after the original tract has been completely subdivided.

(42) "Surveyor" means a registered surveyor, as defined by the Registration Act of the State of Ohio.

(43) "Thoroughfare Plan" means the adopted City Thoroughfare Plan and any amendments thereto. (Ord. 107-78. Passed 11-9-78.)

## CHAPTER 1109

### Procedure for Subdivision Approval

**1109.01 Purpose.**

**1109.02 Classification and determination of subdivision type.**

**1109.03 Minor subdivision procedure.**

**1109.04 Major subdivision stages.**

**1109.05 Filing of preliminary plat for major subdivision.**

**1109.06 Preliminary plat processing of major subdivision.**

**1109.07 Standards for review of preliminary plat.**

**1109.08 Filing of final plat.**

**1109.09 Final plat processing.**

**1109.10 Standards for review of final plats.**

**1109.11 Council action.**

**1109.12 Recording of plat.**

### CROSS REFERENCES

Plat and contents - see Ohio R.C. 711.01 et seq.

Plat approval by planning authority - see Ohio R.C. 711.09

Planning authority approval without plat - see Ohio R.C. 711.131

Vacating plats - see Ohio R.C. 711.17 et seq., 711.39

### 1109.01 PURPOSE.

The purpose of this chapter is to specify the procedures that shall be followed to subdivide land. (Ord. 107-78. Passed 11-9-78.)

### 1109.02 CLASSIFICATION AND DETERMINATION OF SUBDIVISION TYPE.

There are two basic types of subdivisions.

(a) Minor Subdivision. (Approval without plat). The Mayor may determine that a proposed subdivision of land is a minor subdivision if the proposed division of a parcel of land is along an existing public street, does not involve the opening, widening or extension of any street or road and does not involve more than five lots after the original tract has been completely subdivided. The proposed division shall not be contrary to applicable zoning regulations or these subdivision regulations.

(b) Major Subdivision. Any subdivision that does not meet the requirements of a minor subdivision and including the improvements of one or more parcels of land for residential, commercial, or industrial structures or groups of structures which are to be ultimately jointly-owned under a recorded condominium property declaration. Condominium subdivisions shall cease to be subject to these regulations at such time that an appropriate condominium declaration has been prepared for the property as already improved under these regulations and such declaration is submitted for recording under the provisions of Ohio R.C. Chapter 5311. (Ord. 107-78. Passed 11-9-78.)

### 1109.03 MINOR SUBDIVISION PROCEDURE.

(a) Planning Commission. The Planning and Zoning Commission is designated as having authority of review and approval. The Commission, may at its discretion designate an authorized representative to approve or disapprove minor subdivisions. (Ord. 107-78. Passed 11-9-78.)

(b) Submission of Minor Subdivision. Any person proposing to create a minor subdivision shall submit the following to the Zoning Department:

(1) A legal description on a conveyance of such parcel.

(2) The following statement on the conveyance signed by the surveyor, "The above description is the result of a survey made by me and is correct."

(3) Three copies of a plan of the proposed subdivision with the seal of a registered surveyor placed thereon.

(Ord. 67-1987. Passed 4-23-87.)

(4) Minor subdivision fee per Section 1121.10.

(Ord. 58-2001. Passed 5-24-01.)

(c) Standards for Approval. For a minor subdivision to be approved it must meet the standards below:

(1) There shall not be more than five parcels created from an original tract. (See Section 1105.03(24) for the definition of original

tract.)

- (2) All proposed lots must meet the zoning requirements of the City.
- (3) All lots must have frontage on an existing street or road.
- (4) No building site on a proposed parcel shall be within a designated flood-prone area as recognized on the official flood maps of the City.
- (5) The proposal shall not involve the opening, widening or extension of a public nor private street or easement of access.
- (6) Central water and sewer facilities are available to the site for immediate connection or evidence is provided in the form of approved permits that individual on-lot systems will function.
- (d) Action by the Commission. Based upon the standards above and the fulfillment of the proper submission requirements, the Commission shall take one of the following actions within seven working days of the proper submission:
  - (1) Approve the subdivision and stamp the conveyance "APPROVED BY THE CITY OF TALLMADGE PLANNING COMMISSION - NO BUILDING SITE APPROVAL GRANTED" and affix the authorized signature and the date. The approval shall expire within sixty days unless the conveyance is recorded in the office of the County Recorder.
  - (2) Not approve the proposed subdivision and notify the applicant in writing stating the reason for the disapproval.  
(Ord. 107-78. Passed 11-9-78.)

#### **1109.04 MAJOR SUBDIVISION STAGES.**

Major subdivisions shall be approved in two stages: preliminary plat stage and final plat stage.

- (a) The preliminary plat stage requires the subdivider to present all information needed to enable the Planning Commission to determine that the proposed layout is satisfactory and will serve the public interest. This stage also ensures that the subdivider will not be required to expend extensive moneys without some assurance that his plat will be finally approved.
- (b) The final plat stage requires the subdivider to present all data needed to enable the Planning Commission to determine that the subdivision fully complies with these regulations and conforms to the approved preliminary plat. After approval of the final plat by the Planning Commission and after acceptance of all streets, highways or other public ways or open spaces, and the acceptance of required bonds by Council, the plat may be recorded. Approved final plats that are not recorded within twelve months of the date of approval by the Planning Commission shall be void. The Commission may grant one extension of six months to this requirement.  
(Ord. 107-78. Passed 11-9-78.)

#### **1109.05 FILING OF PRELIMINARY PLAT FOR MAJOR SUBDIVISION.**

- (a) Submittal. The subdivider shall file the following data and it shall be received by the Zoning Department at least ten days prior to the regularly scheduled Planning Commission meeting.
  - (1) An application for approval.
  - (2) Ten copies of the preliminary plat. (Ord. 116-79. Passed 9-13-79.)
  - (3) Preliminary plat fee per Section 1121.10.  
(Ord. 58-2001. Passed 5-24-01.)
  - (4) Any other data that the Planning Commission deems necessary for the proper review of the proposal.
  - (5) A list of names and addresses of the owners of the properties within 500 feet of any part of the property on which the subdivision is requested. The Zoning Inspector shall send out notices seven days prior to the meeting to the owners of the properties within 500 feet of any part of the property on which the subdivision is requested.  
(Ord. 116-79. Passed 9-13-79.)
- (b) General Requirements. The preliminary plat shall be prepared by a registered engineer or surveyor and shall indicate facts needed to enable the Commission to determine whether the proposal is satisfactory and in the interest of the public health, safety and welfare.

The plat shall be clearly and legibly drawn to scale, on reproducible material of not less than twelve inches by eighteen inches, nor larger than twenty-four inches by thirty-six inches. Scale shall be one inch equal fifty feet or one inch equal one hundred feet.

The preliminary plat shall contain the following information:

  - (1) Vicinity map. The map shall show the relationship of the proposed subdivision to existing community facilities which serve or influence it. The vicinity map may be on the same sheet as the preliminary plat drawing. The vicinity map shall show:
    - A. Subdivision name; township; tract and original lot or section number; and north arrow.
    - B. Existing and proposed main traffic arteries.
    - C. Any other significant community, activity or features.
    - D. The total drainage area affecting the subdivision and acreage calculated.
  - (2) Identification.
    - A. Proposed name of subdivision, which must not duplicate others in the County, township, tract or original lot or section number.
    - B. Names, addresses, and telephone numbers of owners, subdivider, and registered surveyor, city planner, landscape architect or professional engineer.
    - C. Scale, north arrow and date.
  - (3) Existing data.
    - A. Legal description and drawing to scale.
    - B. Easements: location, width and purpose.
    - C. Streets on and adjacent to the subdivision: names, location, right of way, and roadway width. Planned public improvements; highways or other major improvements planned by public authorities for future construction.
    - D. Location of proposed underground utilities on or near the subdivision; including journalized routes for highways.
    - E. Utilities on and adjacent to the subdivision: location and size of sanitary and storm sewers; location and size of water mains; location of gas lines, fire hydrants and utility poles. If water mains, sewers and/or culverts are not on or adjacent to the tract, indicate the direction and distance to and size of nearest ones.
    - F. Existing contours at intervals of not more than five feet where the ground slope is generally greater than ten percent (10%) and not more than two feet where the ground slope is generally less than ten percent (10%).
    - G. Subsurface conditions on the subdivision such as depth of water table, bedrock and any unique conditions such as abandoned mines.
    - H. Other conditions on the subdivisions or adjacent land within 200 feet:

1. Water courses and areas subject to flooding.
  2. Marshes.
  3. Rock outcroppings.
  4. Wooded areas.
  5. Any structures or other significant features.
  6. Approximate direction and gradient of ground slope including any embankments or retaining walls.
  7. Location and type of buildings, fences, tree lines, etc.
  8. Railroad lines.
  9. Power lines and towers.
  10. Other nearby nonresidential uses of land.
  11. Owners of adjacent unplatted land. (For adjacent platted land refer to subdivision plat by name, plat book and pages.)
- I. Zoning requirements:
1. District.
  2. Lot size and yard requirements.
  3. Proof of any variance or special exceptions which may have been granted, which have a bearing on the subdivision.
- (4) Proposals.
- A. Streets: show proposed streets (indicate each street by name or by a letter, right-of-way widths, approximate grades and proposed improvements.)
- B. Other rights of way or easements: location, width and purpose.
- C. Lots: numbers, dimensions and area of irregular lots in square feet.
- D. Minimum building setback lines.
- E. Land parcels within the subdivision not to be divided into lots.
- F. Public sites: reserved or dedicated for parks, playgrounds, or other public uses.
- G. Sites for other uses: multi-family dwellings, shopping facilities, churches, industry or other nonpublic uses exclusive of single-family dwellings.
- H. Total site data: including acreage, number of residential lots, typical lot size, and acres in parks and other public uses.
- I. When extensive changes of topography are contemplated, the proposed topography shall be indicated.
- J. Proposals for the control of erosion, drainage and sedimentation.
- K. Location of all underground utilities: immediate and future construction.
- (c) Other Information. The Planning Commission may require such additional information as deemed necessary.  
(Ord. 107-78. Passed 11-9-78.)

#### **1109.06 PRELIMINARY PLAT PROCESSING OF MAJOR SUBDIVISION.**

- (a) Processing and Distribution. The preliminary plat shall be distributed, by the City, to the following officials and agencies for their review and recommendation.
- (1) Staff review.
  - (2) City Engineer (two copies).
  - (3) Clerk of Council.
  - (4) Each member of the Planning Commission.
  - (5) Soil and Water Conservation District.
- (b) Official Filing. Upon the proper submission of the preliminary plat the subdivision shall be placed on the agenda of the next regular Planning Commission meeting at which time the Commission shall take one of the following actions:
- (1) Accept the plat for official filing purposes.
  - (2) Not accept the plat for official filing purposes. In this case the applicant shall be notified in writing of the reasons of refusal.
- (c) Planning Commission Approval. Upon the official filing of a preliminary plat the subdivision shall be placed on the agenda of the next regular Planning Commission meeting which shall take place within thirty days or a mutually agreed upon time. At that meeting the Commission shall take one of the following actions:
- (1) Approve the preliminary plat.
  - (2) Revise the plat in conjunction with the subdivider and reschedule for the following meeting for action.
  - (3) Deny the plat. In the case of disapproval, the developer must resubmit any alternative plats from the beginning steps of this process. The Commission shall notify the subdivider in writing within three days of the Commission meeting of the action taken and the standards of these regulations which were not fulfilled or violated resulting in the disapproval. This notification shall be by registered mail.
- (d) Effects of Approval. Upon approval, the Commission shall communicate to Council its action. The approval has the following effect:
- (1) It authorizes the subdivider to prepare a final plat, engineering and construction drawings in accordance with the approved preliminary plat.
  - (2) It approves the conceptual design and street network.
  - (3) It does not authorize the construction of streets nor grading for street purposes.
  - (4) It does not authorize the transfer of lots nor the recording of the plat in the office of the Recorder of Summit County, Ohio.
  - (5) The approval shall be in effect for a twelve month period from the date of approval by the Commission. Upon expiration of a preliminary plat approval, no approval of a final plat shall be given until a new preliminary plat has been resubmitted, officially filed and approved. (Ord. 107-78. Passed 11-9-78.)

#### **1109.07 STANDARDS FOR REVIEW OF PRELIMINARY PLAT.**

The Planning Commission shall review and either approve or disapprove the preliminary plat based upon the following standards:

- (a) Compliance with City of Tallmadge Thoroughfare Plan.
- (b) Compliance with zoning.
- (c) Compliance with design standards of these regulations.
- (d) Compliance with the procedural requirements of these regulations.

(Ord. 107-78. Passed 11-9-78.)

**1109.08 FILING OF FINAL PLAT.**

(a) Submittal. Upon the receipt of the preliminary plat approval, the subdivider may proceed to file the following data with the office of the Planning Commission at least ten days before a regularly scheduled Commission meeting:

- (1) Ten copies of the final plat.
- (2) An application for approval of the final plat that notes any changes between the preliminary and final plat.  
(Ord. 107-78. Passed 11-9-78.)
- (3) A final plat fee and an improvement plan review fee, each per Section 1121.10. (Ord. 58-2001. Passed 5-24-01.)
- (4) Such other data that the Commission may have deemed necessary for the proper review of the proposal.

The subdivider shall also provide the Zoning Department and the City Engineer with copies of final detailed engineering drawings, prepared by a registered engineer for the construction of all public facilities. These plans shall be in conformance with the construction specifications, standard drawings and accepted practice of the City Engineer. These copies shall be submitted at least ten days prior to the Planning Commission meeting at which the final plat is being reviewed. Upon approval the original tracings shall be filed with the City.

(b) General Requirements. The final plat shall be prepared by a registered surveyor and shall conform to the approved preliminary plat and include any changes recommended by the Commission except that it may constitute only that portion of the approved preliminary plat which the subdivider proposes to record and develop at this time. This portion must conform with all the requirements of these regulations.

The final plat shall be clearly and legibly drawn on mylar, or tracing cloth. It shall be eighteen inches by twenty-four inches in outside dimensions; scale shall be one inch equals fifty feet or one inch equals one hundred feet and shall contain the following:

- (1) Name of the subdivision. Location by section, original lot, township, county, state, scale, date, north point.
- (2) Plat boundaries and proposed lot lines with distance to hundredths of a foot and bearings to half minutes.
- (3) Distances and bearings to the nearest existing street lines, section corners, or other recognized permanent monuments which shall be accurately described on the plat.
- (4) Distances, bearings and names of all proposed streets, alleys or crosswalk lines and all connecting streets with adjoining plats.
- (5) Curve data shall include internal angle, radius, arc, tangent, chord bearing, point of curvature and point of tangency.
- (6) Location of all survey monuments to be placed.
- (7) Any areas to be dedicated or reserved for public use with the purpose indicated.
- (8) Building setback lines, with dimensions.
- (9) Protective covenants and restrictions.
- (10) Certification of a registered surveyor using the following standard form:

CERTIFICATE OF SURVEYOR

I hereby certify that this plat is a true and complete land survey made (under my supervision), (by me), on date \_\_\_\_\_ and that all survey monuments shown have been set.

(SEAL)

\_\_\_\_\_

REGISTERED SURVEYOR #

(11) An acknowledgment by the owner or owners, adopting the plat, offering streets for dedication, and establishing utility easements and other public area; using the following standard form:

OWNERS' CONSENT AND OFFER OF DEDICATION

1. We, the undersigned, being all the owners, and lien holders of the lands herein platted, do hereby voluntarily consent to the execution of this plat and do offer for dedication the streets, parks and public grounds as shown thereon to the public use forever.

2. All easements shown hereon are for the construction, operation, maintenance, repair, replacement, or removal of water, sewer, gas, electric, telephone or other utility lines or services, and for the express privilege of removing any and all trees, shrubs, bushes, buildings or other obstructions to the free use of said utilities and for providing ingress and egress to the property for said purposes and are to be maintained as such forever.

\_\_\_\_\_

WITNESS

\_\_\_\_\_

WITNESS

\_\_\_\_\_

WITNESS

\_\_\_\_\_

WITNESS

(12) A certificate of Notary Public relative to subsection (b)(11) hereof in accordance with the following standard form:

CERTIFICATE OF NOTARY PUBLIC

STATE OF OHIO, COUNTY OF SUMMIT, SS  
 Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_  
 19\_\_\_\_ before me the undersigned, a Notary Public in and for said County and State, personally came \_\_\_\_\_  
 \_\_\_\_\_ and \_\_\_\_\_ and acknowledged the signing and execution of the foregoing plat to  
 be their voluntary act and deed.  
 IN TESTIMONY WHEREOF, I have set my hand and notary seal on the day and date above written.  
 My Commission expires \_\_\_\_\_  
 \_\_\_\_\_  
 NOTARY PUBLIC in and for  
 SUMMIT COUNTY, OHIO

(13) A signature block for the Commission in accordance with the following standard form:

APPROVED BY THE PLANNING COMMISSION OF THE CITY OF TALLMADGE, OHIO, this \_\_\_\_\_  
 day of \_\_\_\_\_, 19 \_\_.  
 \_\_\_\_\_  
 CHAIRMAN  
 \_\_\_\_\_  
 SECRETARY

(14) A signature block for Council in accordance with the following standard form:

ACCEPTED BY THE CITY COUNCIL OF TALLMADGE, OHIO, at its regular session this \_\_\_\_\_ day of \_\_\_\_\_,  
 \_\_\_\_\_, 19 \_\_.  
 \_\_\_\_\_  
 PRESIDENT  
 \_\_\_\_\_  
 CLERK OF COUNCIL

(15) A signature block for the City Engineer in accordance with the following standard form:

APPROVED BY \_\_\_\_\_, City Engineer on this day \_\_\_\_\_ of \_\_\_\_\_, 19 \_\_.

(16) Reserve a block three inches by five inches for the official stamp of the County Auditor and County Recorder in the area of the aforementioned certifications.

(Ord. 107-78. Passed 11-9-78.)

**1109.09 FINAL PLAT PROCESSING.**

(a) Distribution. The final plat shall be distributed by the City to the following:

- (1) Two copies for staff review;
- (2) Two copies for City Engineer;
- (3) One copy to Clerk of Council for information;
- (4) One copy for each Planning Commission member.

(b) Approval. Upon the proper filing of a final plat the plat shall be placed for action on the agenda of the next regular Planning Commission meeting. At that time the Commission shall take one of the following actions:

- (1) Approve the final plat.
- (2) Disapprove the plat. In the case of disapproval, the grounds of disapproval shall be stated in the records of the Commission including the reference to the regulations violated by this proposal. Further, the Commission shall notify the subdivider, in writing, within three days of the Commission meeting, of the action taken and the standards of these regulations which were violated. This notification shall be by registered mail.

(c) Effect of Approval. Upon approval or approval with conditions the Commission shall communicate to Council its action. The approval or approval with condition has the following effect.

- (1) It authorizes the subdivider to prepare bonding for Council consideration.
- (2) It authorizes the developer to begin the grading of streets.
- (3) It authorizes the transfer of lots and the recording of the final plat in the office of the Recorder of Summit County, Ohio, upon acceptance of bonds and public dedications by Council.
- (4) If the final plat is not recorded with the County Recorder's office within twelve months of the date of approval by the Planning Commission it shall be null and void.

(Ord. 107-78. Passed 11-9-78.)

**1109.10 STANDARDS FOR REVIEW OF FINAL PLATS.**

The Planning Commission shall either approve or disapprove the plat based upon the following:

- (a) Compliance with thoroughfare plan.
- (b) Compliance with zoning.
- (c) Compliance with the design requirements of these regulations and the construction standards of the City.
- (d) Compliance with the procedural requirements of these regulations.

(Ord. 107-78. Passed 11-9-78)

**1109.11 COUNCIL ACTION.**

Council shall review and judge the acceptance of streets and other dedications for public purpose and shall accept bonds for the guarantee and maintenance of public improvements.

(a) Agreements and Guarantees. All bonds required under this section shall be cash or escrow accounts secured from companies authorized to do business in the State of Ohio and shall be deposited and remain at all times with the Director of Finance and shall not be released without the written consent of the City Engineer.



(b) Title Guarantee. At the time of dedication of land to the City, a title guarantee and lien release from a bank, if appropriate shall be submitted for those lands to be dedicated as indicated on the final plat. (Ord. 107-78. Passed 11-9-78.)

#### **1109.12 RECORDING OF PLAT.**

Upon approval of the final plat by the Planning Commission, the acceptance of bonds and the acceptance of public lands by Council, the signature on all certifications, and the fulfillment of any requirements determined necessary for the proper subdivision of land by the Commission, the City Engineer shall record the plat with the Recorder of Summit County. The plat shall be returned to the City for permanent storage after recording.

(a) Performance Guarantee.

(1) Type of guarantee. The subdivider, in lieu of actual installation or completion of the required improvements when requesting permission to record a final plat, shall execute and file a cash or performance bond or irrevocable letter of credit.

(2) Term of guarantee. Guarantees shall be for a period of not longer than eighteen months unless Council extends the time period by resolution. Council may extend the bond period for a six month period if they determine weather conditions or other unusual factors have caused delay that makes strict enforcement unreasonable.

(3) Amount of guarantee. The financial guarantee shall be in an amount equal to the City Engineer's estimate of the cost of completion of all improvements plus ten percent (10%).

(b) Maintenance Guarantee.

(1) A maintenance bond shall be posted with Council in the amount of ten percent (10%) of the cost of improvements and shall be arranged for a period of twenty-four months from date of acceptance of improvements by Council. This bond is to be posted at the same time as the performance guarantee or prior to acceptance by Council.

(2) The subdivider shall be responsible for maintenance of all improvements including all sedimentation and erosion controls and shall repair all failures due to faulty construction as soon as they become apparent.

(3) He shall also make repairs due to erosion or abuse by utility companies and shall repair all failures for all other reasons during the maintenance guarantee period. The streets and other improvements shall be in a condition acceptable to the City at the end of the maintenance period. If the subdivider fails to perform such maintenance to the complete satisfaction of the City, the City may use such cash maintenance guarantee to make the necessary repairs at their discretion.

(Ord. 107-78. Passed 11-9-78.)

### **CHAPTER 1113**

#### **Design Standards**

**1113.01 Physical considerations.**

**1113.02 Streets.**

**1113.03 Easements.**

**1113.04 Blocks.**

**1113.05 Lots.**

**1113.06 Public sites.**

**1113.07 Deed restrictions.**

**1113.08 Natural features.**

#### **CROSS REFERENCES**

Lot numbering and revisions - see Ohio R.C. 711.02

Minimum lot area - see Ohio R.C. 711.09

Improvements - see P. & Z. Ch. 1117

#### **1113.01 PHYSICAL CONSIDERATIONS.**

(a) Natural Land Use. Subdivisions should be planned to take advantage of the topography of the land, to economize in the construction of drainage facilities, to reduce the amount of grading, and to minimize destruction of trees and topsoil.

(b) Flood Hazard. If any portion of the land within the subdivision is subject to flooding or other hazards, due consideration shall be given to such problems in the design of the subdivision. While portions of a lot may be within a flood prone area no residential occupancy, accessory buildings, nor such other use that may increase danger to health, life or property, or aggravate the hazard of flooding shall be permitted. Further, defined flood plains shall not be filled. Flood plains are defined as shown on maps of the City. (Ord. 107-78. Passed 11-9-78.)

#### **1113.02 STREETS.**

(a) Arrangement. The arrangement, character, extent, width (sixty foot minimum) and location of all streets shall conform to the Thoroughfare Plan. The design of proposed streets and public access to adjacent unplatted lands shall be arranged so that the entire area can be served with a coordinated public street system. All streets must be built to City standards. The width of right of way should be provided so that all underground utilities can be located outside of pavement areas.

(b) Street Classifications.

(1) Major arterial thoroughfares shall be planned for continuation of movement of fast traffic between points of heavy traffic generation and from one section of the community to another. They shall contain as few intersections with minor streets as possible. Such thoroughfares shall traverse the community and should be spaced approximately one mile apart.

(2) Collector streets shall provide a traffic route from local streets to major arterial thoroughfares. Collector streets normally contain a relatively large number of intersections with local streets and few intersections with major arterial thoroughfares.

(3) Local streets shall provide direct and full access to each lot and shall be laid out so that their use by through traffic will be discouraged. The street system shall be so designed that all proposed streets shall be in conformity with modern practices of land subdivision and in general conformity with a plan for the most advantageous development of the entire neighborhood. The streets shall be extended to the boundaries of the tract to be recorded and align with existing streets unless prevented by topography or other physical conditions, or unless, in the opinion of the planning authority, such extension is not necessary or desirable for the coordination of the

layout of the subdivision with the development of adjacent tracts. Dead-end streets or cul-de-sacs will be approved only when necessitated by topography or other physical conditions or where, in the opinion of the approving authority, they are appropriate for the type of development contemplated.

(4) Parallel streets may be required along an existing or proposed major arterial thoroughfare to provide access to lots along such major arterial thoroughfares.

(c) Street Right-of-Way Widths and Grades.

| <b>Classification</b>                        | <b>Minimum Right-of-way Width in Feet</b> |
|--|---|
| Major Arterial Thoroughfare                  | 80  |
| Collector, Commercial and Industrial Streets | 80  |
| Local Streets                                |   |
| Residential                                  | 60  |
| Light Industrial                             | 60  |
| Parallel Streets                             | 50  |

| (d) <u>Street Pavement Width in Feet</u> | <u>Feet</u> |
|--|-------------|
| Major Arterial Thoroughfare              | 44          |
| Collector Streets                        | 30          |
| Local Residential Streets                | 26          |
| Commercial Industrial Streets            | 35          |

(e) Half Streets. Half streets shall be prohibited except where there is an existing half street adjacent to the subdivision in which case the remaining half of the street shall be platted.

(Ord. 107-78. Passed 11-9-78.)

(f) Cul-de-Sac and Dead-end Streets.

(1) Streets designed to be a permanent cul-de-sac should not be longer than 800 feet and shall be provided at the closed end with a turn-around having an outside pavement diameter of at least ninety feet and a street right-of-way line diameter of at least 120 feet.

(Ord. 133-1989. Passed 11-9-89.)

(2) If a cul-de-sac is of a temporary nature and a future extension into adjacent land is anticipated then such turning circle beyond the normal street width shall be in the nature of an easement over the premises included in the turning circle, but beyond the boundaries of the street proper. Such easements shall be automatically vacated to abutting property owners, when such dead-end street is legally extended into adjacent land. If such dead-end street extends only the depth of the corner lot past a street intersection, no turnaround will be required.

(g) Corner Radii. Property lines at street intersections shall be rounded with a radius of not less than twenty-five feet for major arterial thoroughfares, collector and industrial streets, and twenty feet for local streets. Chords or cutoffs may be permitted in place of rounded corners.

(h) Horizontal and Vertical Curves. Angles in the alignment of street lines shall be connected by a curve with a radius on the center line of not less than 200 feet for local streets, 300 feet for collector and industrial streets, and 500 for major arterial thoroughfares. Between reverse curves there shall be a tangent at least 100 feet long on major arterial thoroughfares.

(i) Intersections. Streets should be laid out to intersect as nearly as possible at right angles and no street shall intersect any other street at an angle of less than sixty degrees. In no event shall an intersection containing streets in excess of two be approved.

(j) Street Jogs. Street jogs with center line offsets of less than 160 feet shall be prohibited. If deemed necessary by the Commission the minimum distance between center line offsets may be increased.

(k) Names and Numbers of Streets.

(1) Names of new streets shall not duplicate existing street names as listed in the Ohio Bell Akron Metropolitan Telephone Book unless a new street is a continuation of, or in alignment with the existing platted streets.

(2) House numbers shall be assigned in accordance with the house numbering system now in effect in the City. All new streets shall be named in accordance with ordinance regulations of the City.

(l) Vacation of Streets. The Planning Commission shall not recommend the vacation of any street or part of a street dedicated for public use, if such vacation interferes with the uniformity of the existing street pattern or any future street plans prepared for the area.

(Ord. 107-78. Passed 11-9-78.)

**1113.03 EASEMENTS.**

(a) Utility Easements. Electric and telephone lines shall be located underground. Easements along rear or side lot lines shall be provided for utilities where necessary and shall be at least twenty feet wide.

(b) Drainage Easements. Where a subdivision is traversed by a drainage way, a storm sewer or drainage easement conforming substantially with the lines of such drainage way shall be provided. The easement shall be a minimum of twenty feet wide or wider as the Commission may require and shall generally follow rear and side lot lines. Easements for drainage purposes shall be constructed or defined on the ground by the developer before the allotment plat is accepted. Instances where the water course is not presently channeled or visible, the developer is required to define such water course by excavating or grading. The purpose of this procedure is to prevent future owners from attempting to block the water course on the pretext that they had no knowledge of such drainage easement.

(Ord. 107-78. Passed 11-9-78.)

#### **1113.04 BLOCKS.**

(a) Block Lengths. The long dimension of a residential block shall not exceed 1,500 feet or be less than 800 feet.

(b) Pedestrian Walkways.

(1) Pedestrian walkways shall be provided in all subdivisions. These walkways shall be constructed at a width of not less than four feet and be parallel to the constructed street. Such walkways shall be provided on both sides of a street.

(2) In addition, pedestrian easement ways, not less than twenty feet wide and constructed to a width of not less than eight feet shall be required across blocks where the Commission determines that pedestrian access to schools, playgrounds, shopping centers, transportation and other community facilities is necessary.

(c) Commercial or Industrial Blocks. Blocks intended to be used for commercial or industrial purposes shall be designed specifically for such uses with adequate space set aside for off-street parking and loading facilities.

(Ord. 107-78. Passed 11-9-78.)

#### **1113.05 LOTS.**

(a) Zoning Conformance. The lot size, width, depth and the minimum building setback lines shall conform to the Zoning Ordinance.

(b) Corner Lots. Corner lots shall have extra width to permit appropriate building setback from and orientation to both streets.

(c) Access to Public Streets. The subdividing of land shall provide each lot with full frontage on a public street.

(d) Double-Frontage Lots. Lots shall not be laid out so that they have frontage on more than one street except:

(1) Where the lots are adjacent to the intersection of two streets.

(2) Where it is necessary to separate residential lots for major arterial thoroughfares, a reserve strip along the major arterial thoroughfare shall be deeded to the City. The plat shall state that there shall be no right of access across such reserve strip. The Planning Commission may require that a six foot high solid board fence or masonry wall be constructed or that a ten foot wide planting screen be provided.

(e) Side Lot Lines. Side lot lines shall be substantially at right angles or radial to street lines.

(f) Lot Depth. No lot depth shall exceed four times the lot width or be less than one and one-half times the lot width, at the minimum building set-back line.

(Ord. 107-78. Passed 11-9-78.)

#### **1113.06 PUBLIC SITES.**

(a) The subdivider shall dedicate land to the City for parks, playgrounds, and/or open space in an amount not less than five percent (5%) of the gross area of the major residential subdivision to be developed for the development of a neighborhood park system in accordance with the City's open space plan. Such area shall not exceed ten acres.

(b) In lieu of dedication of land for open space or parks to the City, such land may at the discretion of the Planning Commission, be held by the developer or an approved association of home owners, which association shall be substantial in ownership and duration. The final plat shall be accompanied by restrictions, agreements, and other documents indicating in detail the manner in which any land intended for common or quasi-public use, but not proposed for public ownership, will be held, owned, or maintained for the indicated purpose.

(Ord. 21-1996. Passed 4-25-96.)

#### **1113.07 DEED RESTRICTIONS.**

All deed restrictions shall run with the land and be enforceable by the owner of any of the property lying within the subdivision. Restrictions shall be so written that they may be amended to meet changing conditions. All covenants and restrictions shall indicate the proposed use of the land.

(Ord. 107-78. Passed 11-9-78.)

#### **1113.08 NATURAL FEATURES.**

Due consideration shall be given to preserving outstanding natural features such as scenic spots, water bodies, or exceptionally fine groves of trees. Dedication to and acceptance by a public agency is usually the best means of assuring their preservation.

(Ord. 107-78. Passed 11-9-78.)

### **CHAPTER 1117**

#### **Uniform Improvement Requirements**

**1117.01 Required improvements.**

**1117.02 Storm sewers.**

**1117.03 Sewer and water facilities.**

**1117.04 Curbs and gutters.**

**1117.05 Sidewalks.**

**1117.06 Street signs.**

**1117.07 Street lights.**

**1117.08 Boundary survey.**

**1117.09 Oversize and/or off-site improvements.**

**1117.10 City construction standards.**

**1117.11 Monuments.**

**1117.12 Street trees.**

#### **CROSS REFERENCES**

Cornerstones and permanent markers - see Ohio R.C. 711.03, 711.14

Inspection of streets and acceptances - see Ohio R.C. 711.08, 711.09

#### **1117.01 REQUIRED IMPROVEMENTS.**

(a) General Requirements.

(1) The improvements required shall be designed by an Engineer, registered in the State of Ohio, and furnished and installed by the subdivider in accordance with the provisions of these regulations and other regulations of the State and City. The improvements shall be installed before the final plat is recorded by the subdivider or financial guarantees as specified in these regulations shall have been approved and accepted by Council prior to the recording by the subdivider.

(2) Before work on any improvement is started, the subdivider must secure such permits as may be required and notify the appropriate governmental inspectors to insure that the work is done in conformance with the approved plans.

(Ord. 107-78. Passed 11-9-78.)

(b) Grading.

(1) Streets must be graded the full width and slopes graded beyond the street line where necessary.

(2) Sodding and seeding when needed to prevent erosion, shall be done on cuts or fills made under the above grading requirement.

(3) When deemed necessary by the City Engineer sedimentation basins shall be installed to control erosion during construction.

(4) Lots shall be graded so that water drains away from each building.

(5) As many trees as can be reasonably utilized in the final development plan shall be retained and the grading adjusted to the existing grade at the trees.

(6) The top soil shall not be removed from the site or used as fill, but shall be saved and uniformly spread over the lots as grading is finished.

(7) All improvement plans shall show the topographic conditions before grading and the final elevations after grading.

(Ord. 107-78. Passed 11-9-78.)

**1117.02 STORM SEWERS.**

(a) Provision is to be made for disposal of surface water by storm sewers to the nearest stream or drainage way. Storm sewers shall not simply dispose of water at the property line. Storm sewers must be installed before the paving is started. No storm water outlet shall be connected to a sanitary sewer.

(b) On all developments the rate of storm water run off after development shall equal the rate of run off before development. Exceptions to this requirement may be made by the Commission when a hardship would be involved or an alternative scheme proves to be acceptable based upon sound engineering criteria.

(c) All storm sewers, storm water detention facilities, and all other related facilities shall be constructed and maintained in conformance with the Summit County Engineer Stormwater Drainage Manual.

(Ord. 29-2020. Passed 3-12-20.)

**1117.03 SEWER AND WATER FACILITIES.**

Adequate central sanitary sewer and water supply systems shall be provided by the developer by connection to existing City systems which are deemed adequate by the City Engineer to handle the additional demands and volume which will result from the proposed subdivision. The subdivider, prior to the submission of a plat for approval by the Planning Commission, must receive the written approval for the extension of such water system and sanitary sewer system. The Planning Commission may grant an appropriate variance from the foregoing requirements when the following conditions apply:

(a) When each of the proposed lots is two acres or larger in area and has a lot width of 150 feet or more frontage on a public street.

(b) When the Summit County Health Department indicates that the area is most suitable for sewage disposal facilities.

(c) When the Land Use and Thoroughfare Plan shows that the area is most suitable for low density development.

(Ord. 107-78. Passed 11-9-78.)

**1117.04 CURBS AND GUTTERS.**

Concrete curbs and gutters, separate or integral with pavement, shall be provided.

(Ord. 107-78. Passed 11-9-78.)

**1117.05 SIDEWALKS.**

Sidewalks shall be provided in accordance with Section 1113.04.

(Ord. 107-78. Passed 11-9-78.)

**1117.06 STREET SIGNS.**

Street signs shall be installed on all streets and intersections by the City. The subdivider shall bear the costs associated with street signs and installation.

(Ord. 60-1990. Passed 8-9-90.)

**1117.07 STREET LIGHTS.**

Street lights shall be provided by the subdivider on all streets within a subdivision. The subdivider shall submit a proposed lighting plan for approval of the City Engineer. The subdivider shall bear all costs associated with the street lights and their installation. The subdivider shall install lights to Ohio Edison and City standards.

(Ord. 60-1990. Passed 8-9-90.)

**1117.08 BOUNDARY SURVEY.**

A complete land survey shall be made by a Registered Surveyor. The "error of closure" of the survey shall not exceed 1/10,000 foot.

(Ord. 107-78. Passed 11-9-78.)

**1117.09 OVERSIZE AND/OR OFF-SITE IMPROVEMENTS.**

Oversize and/or off-site extensions of utilities, pavements and other improvements shall be designed and constructed to facilitate the orderly development of nearby land which is an integral part of the neighborhood service or drainage area. Where the City Engineer determines that improvements in excess of the size needed to serve the proposed subdivision are necessary, the subdivider shall install all improvements required to serve his subdivision plus the additional oversize and/or off-site improvements required. (Ord. 107-78. Passed 11-9-78.)

**1117.10 CITY CONSTRUCTION STANDARDS.**

All public improvements shall meet the above standards plus the adopted construction standards of the City presently in effect or any standards that are adopted subsequent to these regulations. Should these improvement regulations conflict with any existing or later

adopted construction standards the more restrictive regulations shall apply.  
(Ord. 107-78. Passed 11-9-78.)

#### **1117.11 MONUMENTS.**

Monuments shall be placed on the perimeter of the allotment at all angle points and points of curve. Monuments shall be placed in monument boxes on all street centerlines, at the intersection of streets, at points of horizontal curve, at the intersection of street centerlines with the allotment perimeter, and at all other points of control so designated by the Planning Commission.  
(Ord. 116-79. Passed 9-13-79.)

#### **1117.12 STREET TREES.**

Street trees shall be provided by the subdivider in conformance with Chapter 1361, Miscellaneous Provisions of the Building Code, and the Guidelines of the Shade Tree Commission.  
(Ord. 60-1990. Passed 8-9-90.)

### **CHAPTER 1121**

#### **Administration and Enforcement**

##### **1121.01 Administration.**

##### **1121.02 Recording of plat.**

##### **1121.03 Sale of land in subdivision.**

##### **1121.04 Revision of plat after approval.**

##### **1121.05 Issuance of building permits.**

##### **1121.06 Public hearing.**

##### **1121.07 Amendment of regulations.**

##### **1121.08 Variances.**

##### **1121.09 Appeals.**

##### **1121.10 Fees.**

##### **1121.99 Penalty.**

#### **CROSS REFERENCES**

Public hearings on general platting rules and regulations - see Ohio R.C. 711.09

Violations of rules and regulations - see Ohio R.C. 711.102

Unlawful transfer of lots - see Ohio R.C. 711.13, 711.15

Platting Commissioner - see Ohio R.C. 735.17 et seq.

#### **1121.01 ADMINISTRATION.**

It shall be the responsibility of the Planning Commission to administer these regulations except where specific authority is given to some other City office as set forth in these regulations.  
(Ord. 107-78. Passed 11-9-78.)

#### **1121.02 RECORDING OF PLAT.**

No plat of any subdivision shall be recorded in the Office of the Recorder or have any validity until it has been approved in the manner prescribed herein. In the event any such unapproved plat is recorded, it shall be considered invalid; and the Planning Commission shall institute proceedings to have the plat struck from the County records.  
(Ord. 107-78. Passed 11-9-78.)

#### **1121.03 SALE OF LAND IN SUBDIVISION.**

No owner or agent of the owner of any land located within a subdivision shall transfer or agree to transfer ownership in the future by reference to, exhibition of, or by the use of a plan or plat of a subdivision before such plan or plat has been approved and recorded in the manner prescribed herein. Any sale or transfer contrary to the provision of this section is void. The description of such subplot or parcel by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transaction from the provisions of these regulations.  
(Ord. 107-78. Passed 11-9-78.)

#### **1121.04 REVISION OF PLAT AFTER APPROVAL.**

No changes, erasures, modifications, or revision shall be made in any plat of a subdivision after approval has been given by the Planning Commission and an endorsement is made in writing on a plat, unless the plat is first resubmitted and the changes approved by the Planning Commission. A fee of fifty dollars (\$50.00) shall be charged for a revision.  
(Ord. 107-78. Passed 11-9-78.)

#### **1121.05 ISSUANCE OF BUILDING PERMITS.**

No building permit shall be issued for the construction of a dwelling or other structure within a subdivision which has not received final approval and which has not been recorded in the Office of the Recorder of Summit County, Ohio.  
(Ord. 107-78. Passed 11-9-78.)

#### **1121.06 PUBLIC HEARING.**

The Planning Commission, on its own motion, or upon petition by affected property owners, may, prior to acting on a preliminary plat for any subdivision, hold a hearing thereon at such time and place and upon such notice as the Commission may designate. All interested parties shall be entitled to be heard at such hearing. (Ord. 107-78. Passed 11-9-78.)

#### **1121.07 AMENDMENT OF REGULATIONS.**

The Planning Commission may, on its own motion and, with or public hearing, recommend to Council amendments, supplements or changes to these regulations. Notice shall be given by the Commission of the time and place of public hearing by publication in at least one newspaper of general circulation published in the City or in Summit County, Ohio, thirty days prior to holding of the hearing. The

amendment or amendments shall be on file in the office of the Commission for public examination during such thirty days.  
(Ord. 107-78. Passed 11-9-78.)

**1121.08 VARIANCES.**

The Planning Commission may grant variances to these regulations where unusual or exceptional factors or conditions require such modification provided that the Planning Commission shall:

- (a) Find that unusual topographical or exceptional physical conditions exist.
- (b) Find that strict compliance with these regulations would create an extraordinary hardship in the face of the exceptional conditions.
- (c) Permit any modification to depart from these regulations only to the extent necessary to remove the extraordinary hardship.
- (d) Find that any modification granted will not be detrimental to the public interest nor in conflict with the intent and purposes of these regulations when modified.
- (e) Require such other conditions to be met by the proposed plat as the Planning Commission may find necessary to accomplish the purposes of these regulations when modified.

(Ord. 107-78. Passed 11-9-78.)

**1121.09 APPEALS.**

Whenever a party presenting any subdivision to the Planning Commission has been rendered a decision from the Commission which is adverse to the request of such party and will operate as a final disposition of the matter presented, so as to leave the aggrieved party without further remedy, then appeal may be made as outlined in Ohio R.C. Chapter 711.

(Ord. 107-78. Passed 11-9-78.)

**1121.10 FEES.**

- (a) Fees in the amount set forth in the following schedule shall be paid upon the filing of an application for subdivision of land.

- (1) Minor subdivision fee: \$25.00 per lot
- (2) Major subdivision fee:
  - A. Preliminary plat: \$250.00
  - B. Final plat: \$500.00 plus \$20.00 per lot
  - C. Revision in final plat: \$100.00
  - D. Improvement Plan Review: \$250.00 plus \$20.00 per lot
  - E. Street tree inspection fee: See Section 1361.01(e)(1)
- (b) The filing fee shall be paid in legal tender or by check or money order made payable to the City.

(Ord. 58-2001. Passed 5-24-01.)

**1121.99 PENALTY.**

(a) Whoever willfully violates any rule or provision of these regulations or fails to comply with any order pursuant thereto shall forfeit and pay not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000). Such sum may be recovered with costs, in a civil action brought in the Court of Common Pleas of Summit County by a legal representative of the City in the name of the City and for the use of the City.

(b) A County Recorder who records a plat contrary to the provisions of these regulations shall forfeit and pay not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) to be recovered with costs in a civil action by the Prosecuting Attorney in the name of and for the use of the City.

(c) Any person, whether he be the owner or agent of the owner who transfers any subplot, parcel or tract of such land from or in accordance with a plat of a subdivision before such plat has been recorded in the Office of the County Recorder, shall forfeit and pay the sum of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each subplot, parcel, or tract of land so sold. The description of such subplot, parcel, or tract by metes and bounds in the deed or transfer shall not serve to exempt the seller from the forfeiture provided in this section.

(d) Any person who disposes of or offers for sale or lease for a time exceeding five years, any subplot or any part of a subplot in a subdivision before provisions of these regulations are complied with, shall forfeit and pay five hundred dollars (\$500.00) for each subplot or part of a subplot so sold, offered for sale, or leased, to be recovered with costs in a civil action, in the name of the City for the use of the City.

(Ord. 107-78. Passed 11-9-78.)

**TITLE THREE - Zoning Administration**

- Chap. 1131. General Provisions.
- Chap. 1133. Definitions.
- Chap. 1135. Administration and Enforcement.
- Chap. 1136. Zoning Certificates.
- Chap. 1137. Variances, Exceptions and Appeals.
- Chap. 1139. Amendments.
- Chap. 1141. Site Plan Review.

**CHAPTER 1131**

**General Provisions**

- 1131.01 Preamble.**
- 1131.02 Short title.**
- 1131.03 Interpretation of standards.**
- 1131.04 Separability.**

## CROSS REFERENCES

Council may amend districting or zoning - see Ohio R.C. 713.10

Basis of districts - see Ohio R.C. 713.10

Referral of zoning permit applications to Director of  
Transportation - see Ohio R.C. 5511.01

### **1131.01 PREAMBLE.**

An ordinance of the City enacted in accordance with a comprehensive plan and for the purpose of promoting the public health, safety, morals, convenience, and general welfare establishing land use classifications, dividing the City into districts, imposing regulations, restrictions, and prohibitions on the use and occupancy of real property limiting the height, area, and bulk of buildings and other structures and providing for yards and other open spaces around them establishing standards of performance and design and providing for the administration and enforcement thereof.

(Ord. 89-1997. Passed 12-11-97.)

### **1131.02 SHORT TITLE.**

Titles Three, Five, and Seven of this Part Eleven - Zoning Code shall be known as the "Zoning Code of the City of Tallmadge, Ohio".

(Ord. 89-1997. Passed 12-11-97.)

### **1131.03 INTERPRETATION OF STANDARDS.**

In their interpretation and application, the provisions of this Part shall be held to be minimum requirements. Wherever this Part imposes a greater restriction than is imposed or required by other provisions of law or by other rules or regulations or ordinances, the provisions of this Part shall govern.

(Ord. 89-1997. Passed 12-11-97.)

### **1131.04 SEPARABILITY.**

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

(Ord. 89-1997. Passed 12-11-97.)

## **CHAPTER 1133**

### **Definitions**

#### **1133.01 Definitions.**

## CROSS REFERENCES

General definitions - see ADM. 101.02

Subdivision Regulation definitions - see P. & Z. Ch. 1105

Wireless communication towers and antennas - see P. & Z. 1193.01

### **1133.01 DEFINITIONS.**

For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (1) "Accessory building" means a building customarily incidental and subordinate to the principal building located on the same lot or premises as the principal building.
- (2) "Agriculture" means the use of land for agricultural purposes including farming of crops, horticulture, floriculture, viticulture, animal husbandry, stock raising and the necessary accessory uses for packaging, treating, or storing the produce; however the operation of any such accessory uses shall be secondary to that of the normal agriculture activities.
- (3) "Alley" means a public way which affords only a secondary means of access to abutting property.
- (4) "Alteration" means:
  - A. As generally applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.
  - B. As applied to a building in the Design Control Overlay District or a Recognized Heritage Structure, the general definition in (a), above, and also includes any act or process that changes one or more of the exterior architectural features of a structure, including, but not limited to, the erection, construction, reconstruction, addition, sandblasting, water blasting, chemical cleaning, chemical stopping, or removal of any structure, but not including changes to the color of exterior paint.
- (5) "Apartment" see "Dwelling, Multi-Family".
- (6) "Applicant" means the record owner, representative, or party in interest of the real property.
- (7) "Architectural appearance and features" means the architectural character and general appearance of the exterior of a structure, or natural object, including, but not limited to, the texture of the exterior of a structure or natural siding or roofing, and the type of character of all windows, doors, light fixtures, roof, and appurtenants elements.
- (8) "Architectural rehabilitation" means the preservation and replacement of portions and features, or the replacement of missing portions and features of a structure which contributes to its historic, architectural, and cultural value.
- (9) "Automotive filling station" means any building, land or area used or intended to be used for the retail dispensing or sales of vehicular fuels and including as an accessory use convenience retail sales, and the sale and installation of lubricants, tires, batteries, and similar accessories.
- (10) "Automotive service" means any general repair, rebuilding, reconditioning, body or fender work, framework, painting, or the replacement of parts to motor vehicles or trailers.
- (11) "Basement" means a "story" partially below the level of the finished grade. When a basement floor is less than two feet below the average finished grade, it will be rated as the first story or ground floor.

- (12) "Bed and breakfast establishment" means any owner occupied dwelling unit that contains no more than four rooms where lodging, with or without meals, is provided for compensation.
- (13) "Breezeway" means a covered passageway open at both ends which connects two buildings or two portions of a building.
- (14) "Building" means a permanently located structure having a roof, built or occupied as a shelter or enclosure for persons, animals, or property, and when separated by a fire wall, each such separate portion of such structure shall be deemed a separate building.
- (15) "Building height" means the vertical dimension measured from the average elevation of the finished lot grade at the front of the building, to the highest point of the top story in the case of a flat roof; to the deck line of a mansard roof; and to the average height between the plate and ridge of a gable, hip, or gambrel roof.
- (16) "Building line" means a line defining the minimum front, side and rear land requirements in which no building or structure may be located, except as otherwise provided herein.
- (17) "Building, principal" means the building on a lot or building site designed or used to accommodate the primary use to which the premises are devoted. Where a permissible use involves more than one structure designed or used for the primary purpose, as in the case of group dwellings, each such permissible building on one lot as defined by this Zoning Code shall be construed as constituting a principal building.
- (18) "Canopy" is a covering of canvas on a framework or similar construction sheltering an area or forming a sheltered walk to the entrance of a building.
- (19) "Carport" means a covered automobile parking space not completely enclosed by walls or doors. For the purposes of this Zoning Code, a carport shall be subject to all the regulations prescribed in this Zoning Code for a private garage.
- (20) "Centralized sewer system" means where individual lots are connected to a common sewage disposal system, excluding septic tanks, whether publicly or privately owned and operated.
- (21) "Centralized water system" means where individual lots are connected to a common distribution system whether publicly or privately owned and operated.
- (22) "Certificate of Appropriateness" means a certificate issued by the Tallmadge Heritage Commission indicating its approval of plans for alteration, construction, removal, or demolition of a structure, landmark, place, façade, district, fixture, or natural object for a structure and related property designated as a Recognized Heritage Structure.
- (23) "Certificate of Design Compliance" means a certificate issued by the Tallmadge Heritage Commission indicating its approval of plans for alteration, construction, removal, or demolition of a structure, landmark, place, façade, district, fixture, or natural object for a structure and related property within the Design Control Overlay District and such structure and related property is not a designated Recognized Historic Structure.
- (24) "Club" means an association of persons who are bona fide members paying regular dues, organized for some common non-profit purpose but not including groups organized primarily to render a service which is customarily carried on as a business.
- (25) "Commission" or "Planning Commission" means the City Planning and Zoning Commission of the City of Tallmadge.
- (26) "Convalescent care facility" means a building or group of buildings, public or private, which provides extended care facilities or personal care or nursing to ill, physically infirm or aged persons who are not related by blood or marriage to the operator.
- (27) "Council" means the City Council of the City of Tallmadge.
- (28) "Court" means an unoccupied space on a lot other than a yard, designed to be partially surrounded by group dwellings.
- (29) "Day care" means a building or structure where care, protection and supervision are provided on a regular schedule, for a fee, at least twice a week, to at least five persons at one time, including any relation of the day care provider.
- (30) "Demolition" means any act or process that destroys in part or in whole a building or a structure.
- (31) "Density" means the number of families residing on, or dwelling units developed on an acre of land.
- (32) "District" means a section of the incorporated territory within the City for which the regulations governing the use of buildings and premises or the height and area of buildings are uniform.
- (33) "Drive-in establishment" means any building, structure or portion thereof from which business is transacted, or is capable of being transacted, directly with customers who are located in a motor vehicle during such transactions.
- (34) "Dwelling" means any building or portion thereof designed or used exclusively as the residence or sleeping place of one or more families, but not including a tent, cabin, trailer or trailer coach, bed and breakfast establishment, hotel/motel, or mobile home.
- (35) "Dwelling, multi-family" means a dwelling designed for occupancy by three or more families living independently of each other and each having separate toilet and kitchen facilities.
- (36) "Dwelling, single-family" means a dwelling designed for occupancy by one family.
- (37) "Dwelling, two-family" means a dwelling designed for occupancy by two families living independently of each other and each having separate toilet and kitchen facilities.
- (38) "Dwelling unit" means one or more rooms in a dwelling designed for occupancy by one family for living or sleeping purposes, and having toilet facilities and one kitchen.
- (39) "Essential service" means the erection, construction, alteration or maintenance by public utilities or municipal departments, or commissions of underground or overhead gas, electrical, steam, or water transmission or distribution system, collections, communications, supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduit, cables, traffic signals, hydrants, and other similar equipment and accessories in connection therewith, but not including buildings reasonably necessary for the furnishing of adequate service by such public utilities or municipal departments or commissions, or for the public health, or safety, or general welfare.
- (40) "Family" means one or more persons occupying a premises and living as a single housekeeping unit, whether or not related to each other by birth or marriage, and maintaining and using the same and certain other housekeeping facilities in common.
- (41) "Financial institution" means any building, property or activity of which the principal use or purpose of which is the provision of financial services including but not limited to banks, facilities for automated teller machines (ATM's), credit unions, savings and loan companies, and mortgage companies.
- (42) "Garage, private" means an accessory building or an accessory portion of the main building, enclosed on all sides and designed or used for the shelter or storage of passenger vehicles and located on the same lot as the dwelling to which it is accessory.



- (43) "Garage, public" means a building, other than a private garage, enclosed on all sides and used for the care, repair or equipping of automobiles, or where such vehicles are kept for hire or sale or are stored.
- (44) "Heritage Commission" means The Tallmadge Heritage Commission.
- (45) "Historic preservation" means the thoughtful management and saving from destruction or deterioration, old and historic buildings, sites, structures, and providing for their continued use by means of restoration, rehabilitation, or adaptive use.
- (46) "Home occupations" means any occupational profession, activity or use conducted entirely within a dwelling unit and carried on by persons residing in the dwelling unit which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes, and does not change the exterior of the property or affect the residential character of the neighborhood.
- (47) "Hotel" means a building in which lodging is provided and offered to the public for compensation and which is open to transient guests and possibly providing additional services such as restaurants, meeting rooms, and recreational facilities.
- (48) "Kennel" means any lot or premises on which, for profit, four or more domesticated animals more than four months of age are housed, groomed, bred, boarded, trained, sold, or which offers provisions for minor medical treatment.
- (49) "Loading space" means an off-street space or berth on the same lot with a building or contiguous to a group of buildings, for the temporary parking of a commercial vehicle or vehicles while loading or unloading merchandise or materials, and which abuts upon a street, alley, or other appropriate means of access.
- (50) "Lodge" means a non-profit organization with its basic principal being benevolent fraternal, social, religious and/or patriotic, and which does not customarily render a service or perform a function usually carried on as a business.
- (51) "Lot" means a parcel of land occupied or capable of being occupied by one or more buildings and the accessory buildings customarily incident to it, including such open spaces as are necessary by this Zoning Code.
- (52) "Lot, corner" means a lot at the point of intersection of and abutting on two or more intersecting streets.
- (53) "Lot, depth" means the mean distance from the right-of-way line of the street at the front of the lot to its opposite rear line measured in the general direction of the side lines of the lot. Where the right of way is not established, it shall be assumed to be sixty feet. Where a major thoroughfare or collector thoroughfare is designated on the Land Use and Thoroughfare Plan then the lot depth shall be measured from the proposed right-of-way line of the designated major thoroughfare or collector thoroughfare.
- (54) "Lot, interior" means a lot other than a corner lot.
- (55) "Lot, lines" means the lines defining the boundaries of a lot.
- (56) "Lot of record" means a lot which is part of a subdivision, the plat of which has been recorded in the office of the Recorder of Summit County, or a lot described by metes and bounds, the deed to which has been recorded in the office of the Recorder of Summit County.
- (57) "Lot, width" means the width of a lot measured along the minimum front yard setback line.
- (58) "Major thoroughfare and collector thoroughfare" are thoroughfares designated as such on the Land Use and Thoroughfare Plan duly adopted by Council and the Planning Commission.
- (59) "Manufacturing" means the process of making or fabricating raw materials by hand, machinery or the combination thereof into finished parts or products.
- (60) "Marquee" means a roof-like structure projecting over an entrance, as to a theater.
- (61) "Minimum building setback line" means a line parallel to the street right-of-way line at a distance therefrom equal to the required depth of the front yard, and extending across the full width of the lot. Where the right-of-way line is not established it shall be assumed to be sixty feet. Where a major thoroughfare or collector thoroughfare is designated on the Land Use and Thoroughfare Plan the setback line shall be measured from the proposed right-of-way line.
- (62) "Minimum living floor area" means the living floor area and may consist of areas such as living room, bedroom, bathroom, dining room, rooms for cooking, den, library and family rooms, but shall not include areas such as porches, breezeways, terraces, utility rooms, garages, and basements.
- (63) "Motel" means a facility, with exterior room entrances, offering transient lodging accommodations on a daily rate to the general public and providing additional services, such as restaurants, meeting rooms, and recreational facilities.
- (64) "Non-conforming use" means a building, structure or use of land used or lawfully existing at the time of the enactment of this Zoning Code, or any amendment or supplement thereto, and which does not conform to the district regulation other than height, area, and yard requirements for the district in which it is situated.
- (65) "Office" means a building or portion of a building wherein services are performed involving predominantly administrative, professional, or clerical operations.
- (66) "Open space" means an area of land which is in its natural state or is developed only for the raising of agricultural crops, or for public outdoor recreation.
- (67) "Parking space" means an off-street space for the temporary parking of a vehicle for a period longer than required to load or unload persons or goods.
- (68) "Personal services" means activities conducted in an office, store or other place of business catering to the personal needs of a customer, such as normally conducted by a barber, beautician, tailor, dressmaker, doctor, attorney, architect, or a photocopy duplication center.
- (69) "Planned Residential Development" (PRD) means a residential development consisting of single-family detached and single-family attached residential units in a variety of densities and styles, supported by adequate public or private infrastructure and open space and implemented in accordance with an overall plan approved by the Planning and Zoning Commission and Council.
- (70) "Public utility" means any person, firm, corporation, governmental agency or board fully authorized to furnish under municipal or county regulation, to the public, electricity, gas, steam, telephone, transportation of water, or any other similar public utilities.
- (71) "Recognized Heritage Structures (RHS)" means the structures with historical importance as recommended by the Tallmadge Heritage Commission and adopted by Tallmadge City Council.
- (72) "Reconstruction" means the act or process of reproducing by new construction, the form and detail of a vanished building,

structure, or object, or a part thereof, as it appeared at a specific period of time.

- (73) "Recreation facility, indoor commercial" means any land or facility privately operated as a business and open to the general public, for a fee, that may include indoor facilities such as, but not limited to: fitness centers, racquetball, in-line skating, billiard parlors, bowling alleys, video amusement arcades.
- (74) "Recreation facility, non-commercial" means any land or facility operated by a governmental agency or a non-profit organization and open to the general public or members of the non-profit organization with or without a fee that shall include, but is not limited to: picnic areas, bike/hike trails, athletic fields, swimming pools.
- (75) "Recreation facility, outdoor commercial" means any land or facility privately operated as a business and open to the general public, for a fee, that may include outdoor facilities such as, but not limited to: miniature golf, batting cages, tennis courts, volleyball courts, athletic fields.
- (76) "Rehabilitation" means the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural and cultural values.
- (77) "Religious places of worship" means an institution that a congregation of people regularly attend to participate in or hold religious services, meetings and other activities, including buildings in which the religious services of any denominations are held.
- (78) "Relocation" means any repositioning of a structure on its site or moving it to another site.
- (79) "Restaurant" means an establishment where the principal business is the sale and service of unpackaged food and beverages in a ready-to-consume state where (1) fermented malt beverages, malt, special malt, and vinous and spirituous liquors may be served, (2) the minimum sales attributable to food is sixty-five percent (65%), (3) there is no service to a customer in an automobile, and (4) the design or principal method of operation is a sit down establishment where customers, normally provided with an individual menu, are generally served food and beverages in non-disposable containers by an establishment employee at the same table or counter at which the food and beverages are consumed.
- (80) "Restaurant/fast food" means an establishment whose principal business is the sale of prepared or rapidly prepared food, in disposable containers and without table service, directly to the customer in a ready-to-consume state.
- (81) "Restoration" means the act or process of accurately taking a building's appearance back to a specific period of time by removing later work and by replacing missing earlier features to match the original.
- (82) "Retail business" means any business selling goods, wares or merchandise directly to the ultimate consumer for direct consumption and not for resale.
- (83) "Shopping Center" means a grouping of four or more retail and service uses on a single site that is developed, owned and managed as a unit with off-street parking and loading as an integral part of that unit.
- (84) "Sign" means any visual communication display, object device, graphic structure or part designed or intended to convey information or attract attention or to announce or promote to the public in written or pictorial form an object, product, service, place, activity, person, institution, business, or organization.
- (85) "Sign, attached" means a sign permanently affixed to a wall, canopy or awning of a building or structure, if permitted and includes projecting signs.
- (86) "Sign, banner" means a temporary decorative sign constructed of durable flexible material which is draped from supports to which it is securely attached. Such signs may be decorated with themes of the season; or with graphics announcing an event or community message and carry the name of the sponsor.
- (87) "Sign, changeable copy" means a portion of a sign with letters, characters, or graphics that are not permanently fixed to the structure, framing or background, or not permanently displayed on the sign face, which allows the letters, characters or graphics to be modified from time to time manually or by electronic or mechanical devices, such as a bulletin board or electronic message board. Changeable copy signs may not be used to display commercial messages relating to products or services that are not offered on the property.
- (88) "Sign, project real estate/construction" means a temporary sign identifying a project while it is under construction and typically includes the architect, contractor, subcontractor, and/or material supplier participating in construction on the property on which the sign is located.
- (89) "Sign, entrance/exit" means an on-premise sign located at the entrance/exit drives, near the street, giving directional information.
- (90) "Sign, freestanding" is any permanent sign not attached to a building. Freestanding signs shall include signs attached to poles and signs attached directly to the ground.
- (91) "Sign, non-conforming" means any sign which was erected legally, but which does not comply with subsequently enacted sign restrictions and regulations.
- (92) "Sign, permanent" means a sign designed for use for an indefinite period of time. Permanent signs may be free-standing or attached to buildings or other structures.
- (93) "Sign, portable" means any sign which is movable and which is not permanently attached to the ground, a structure or other signs, and is designed or constructed in such a manner that it can be moved or relocated without involving any structural or support changes.
- (94) "Sign, projecting" means a sign which projects perpendicular from the exterior wall of a building.
- (95) "Sign, public interest" means a sign intended for the identification of events, services, or other needs related to the public interest to the City of Tallmadge, as specifically authorized by the Mayor, which may include, but is not limited to not-for-profit service organizations, religious institutions, community festivals, or governmental announcements, etc.
- (96) "Sign, roof" a sign erected upon, or directly above, a roof or roof eaves, or on top or extending above a parapet.
- (97) "Sign, temporary" means a sign designed for use for a limited period of time. Temporary signs may be made of rigid or non-rigid but durable materials including wood, metal, cloth, canvass, plastic, etc. Depending upon sign type, they may be attached to poles, buildings, or be free-standing.
- (98) "Sign, window" means any sign which is installed on the inside of a window, or within two (2) feet of the window, and is intended to be viewed from outside the building. Signs that are inside the building, and not attached to the window, and are not intended to be legible beyond five (5) feet from the building are not considered window signs.

- (99) "Stabilization" means the act or process of applying measures essential to the maintenance of a deteriorated building as it exists at present, establishing structural stability and a weather resistant enclosure.
- (100) "Story" means that portion of a building included between the surface of any floor and the surface of the floor next above it. If there is no floor above it, then the space between such floor and the top surface of the ceiling joints above it shall be considered a story. A basement shall not be considered as a story when computing the height of the building.
- (101) "Street, public" means a fully improved public thoroughfare which has been dedicated or deeded to the public for public use and accepted by the City and which affords the principal means of access to abutting property.
- (102) "Street, private" means a thoroughfare which affords principal means of access to abutting property, but which has not been dedicated or deeded to the public.
- (103) "Structure" means anything constructed or erected which requires location on the ground or attached to something having a location on the ground, but not including fences, or walls used as fences.
- (104) "Structural alterations" means any change in the supporting members of a building such as bearing walls, columns, beams, girders or any substantial changes in the roof and exterior walls.
- (105) "Swimming pool" means any structure located in ground or above ground containing, or normally capable of containing, water to a depth at any point greater than twenty-four (24) inches for the purpose of recreation, sports activity, or swimming.
- (106) "Thoroughfare" means a street as identified on the official Thoroughfare Plan of the City of Tallmadge.
- (107) "Trailer, trailer coach, or automobile trailer" means a vehicle used or intended for use as a conveyance upon the public streets or highways, so designed, constructed, reconstructed, or added to by means of portable accessories in such manner as will permit the occupancy thereof as a mobile home or sleeping place.
- (108) "Use" means the purpose for which a building or premises is or may be occupied. In the classification of uses, a "use" may be a use as commonly understood or the name of an occupation, business, activity or operation carried on, or intended to be carried on; in a building or on premises, or the name of a building, place or thing which name indicates the use or intended use.
- (109) "Use, accessory or accessory structure" means use or structure subordinate to the principal use of a building or to the principal use of land, which is located on the same lot as the principal use, and which is serving a purpose customarily incidental to the use of the principal building or land use.
- (110) "Use, conditional" means a use which is permitted in a district only if a zoning certificate therefore is expressly authorized by the Planning and Zoning Commission and Council.
- (111) "Use, principal permitted" means a use which is permitted outright in a district for which a zoning certificate shall be issued by the Zoning Inspector provided that the applicant meets the applicable requirements of the Code.
- (112) "Variance" means a modification of the strict terms of the relevant regulations where such modification will not be contrary to the public health, safety, or welfare and where owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship.
- (113) "Yard" means an open area other than a court, on a lot, unoccupied and unobstructed from the ground upward.
- (114) "Yard width, side" means the perpendicular distance between the established side lot line and any portion of any structure existing or to be constructed on such lot.
- (115) "Yard depth, front" means the perpendicular distance between the street right-of-way line and the nearest portion of any structure existing or to be constructed excluding steps and uncovered porches. Where the right-of-way is not established it shall be assumed to be sixty (60) feet. Where a major thoroughfare or collector thoroughfare is designated on the Land Use and Thoroughfare Plan the front yard depth shall be measured from the proposed right-of-way line.
- (116) "Yard depth, rear" means an open unoccupied space on the same lot with the building between the rear line of the building and the rear line of the lot and extending the full width of the lot.
- (117) "Zoning Certificate" means a document issued by the Zoning Inspector authorizing buildings, structures, or uses consistent with the terms of this Chapter and for the purpose of carrying out and enforcing its provisions.
- (118) "Zoning Inspector" means the administrative officer for the purpose of affecting the proper administration of this Zoning Code of the City of Tallmadge, Ohio and shall have the powers of a police officer when enforcing the requirements of this Zoning Code.
- (119) "Zoning map" means the "Zoning District Map of the City of Tallmadge, Ohio."  
(Ord. 71-2012. Passed 9-13-12.)

## CHAPTER 1135

### Administration and Enforcement

**1135.01 Purpose.**

**1135.02 Zoning Administrator.**

**1135.03 Reserved.**

**1135.04 Reserved.**

**1135.05 Responsibilities of the Zoning Administrator.**

**1135.06 Planning and Zoning Commission.**

**1135.07 Board of Zoning Appeals.**

**1135.08 Heritage Commission.**

#### CROSS REFERENCES

Appeals from zoning decisions - see Ohio R.C. 713.11, Ch. 2506

Council to hold public hearings - see Ohio R.C. 713.12

**1135.01 PURPOSE.**

The purpose of this Chapter is to set forth the powers and duties of the Zoning Administrator, the Planning and Zoning Commission, the Board of Zoning Appeals, and the Heritage Commission with respect to the Administration of the provisions of this Zoning Code. (Ord. 70-2012. Passed 9-13-12.)

**1135.02 ZONING ADMINISTRATOR.**

The Zoning Administrator is the general title assigned to that person, or persons, who is (are) designated by the Mayor with the responsibility for administering and enforcing this Zoning Code. Throughout this Zoning Code the Zoning Administrator may be referred to as Zoning Inspector, Deputy Zoning Inspector, Acting Zoning Inspector, or Building Official. Regardless of the titles used in this Code the responsibility for administration shall be the same as set forth in Section 1135.05.

(Ord. 70-2012. Passed 9-13-12.)

**1135.03 RESERVED.**

**1135.04 RESERVED.**

**1135.05 RESPONSIBILITIES OF THE ZONING ADMINISTRATOR.**

The Zoning Administrator shall have the following responsibilities and powers:

- (a) Enforce the provisions of this Code and interpret the meaning and application of its provisions.
- (b) Receive, review and make determinations on applications for zoning certificates.
- (c) Issue zoning certificates as provided by this Code, and keep a record of same with notations of special conditions involved.
- (d) Review and process applications pursuant to the provisions of this Code.
- (e) Make determinations as to whether violations of this Code exist, determine the nature and extent thereof, and notify the owner in writing, specifying the exact nature of the violation and the manner in which it shall be corrected by the owner, pursuant to the procedures in this Code.
- (f) Conduct inspections of buildings and uses of land to determine compliance or non-compliance with this Code.
- (g) Maintain permanent and current records required by this Code, including but not limited to the Official Zoning District Map, Zoning Certificates, inspection documents and records of all variances, amendments and conditional uses. These records shall be made available for use of the City Council, the Planning and Zoning Commission, the Board of Zoning Appeals, the Heritage Commission, and the public.
- (h) Determine the existence of any violations of this Code and enforce this Code.
- (i) Revoke a Zoning certificate or approval issued contrary to this Code based on a false statement or misrepresentation in the application.

(Ord. 70-2012. Passed 9-13-12.)

**1135.06 PLANNING AND ZONING COMMISSION.**

(a) Authority. The Planning and Zoning Commission is authorized to act as the administrative board as provided by Charter. It shall have the responsibilities as set forth in the City Charter, including but not limited to the following responsibilities and powers as they relate to this Zoning Code here and elsewhere:

- (1) Initiate advisable Official Zoning District Map changes, or changes in the text of the Code where same will promote the best interest of the public in general through recommendation to the City Council.
- (2) Review all proposed amendments to the text of this Code and the Official Zoning District Map and make recommendations to the City Council.
- (3) Carry on a continuous review of the effectiveness and appropriateness of this Code and recommend such changes or amendments as it feels would be appropriate.
- (4) Review and act on site plan and accessway and landscaping applications.
- (5) Review all applications for Conditional Uses and make recommendations to Council.

(b) Meetings. The Planning and Zoning Commission meets the first Thursday of each month or in addition, at the call of its chairman or two other members, and at such other regular times as it may, by resolution determine. The Director of Law, or a member of his staff shall attend such meetings and serve as legal advisor to the Commission.

(c) Quorum. The Planning and Zoning Commission shall require a quorum of three members at all its meetings, and a concurring vote of three members shall be necessary to effect an order.

(d) Witnesses. The Planning and Zoning Commission Chairman or acting Chairman may administer oaths and compel the attendance of witnesses in all matters coming before the Commission.

(Ord. 89-1997. Passed 12-11-97.)

**1135.07 BOARD OF ZONING APPEALS.**

(a) Authority. The Board of Zoning Appeals is authorized to act as the administrative board as provided by Charter and shall have the following responsibilities and duties:

- (1) Hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation or determination made by the Zoning Inspector, Deputy Zoning Inspector or Acting Zoning Inspector.
- (2) Authorize such variances and exceptions from the terms of this Code as will not be contrary to the public interest, where, owing to the special conditions, a literal enforcement of this Code will result in unnecessary hardship, and so that the

spirit of this Code shall be observed and substantial justice done. Procedures for variances and exceptions shall conform to Section 1137.03.

(3) Appeals taken on the basis of a decision rendered by the Planning and Zoning Commission on conditional use requests .

(4) Appeals taken on the basis of a decision rendered by the Appearance Commission on Certificates of Appropriateness.

(b) Meetings. The Board of Zoning Appeals shall meet the second Tuesday of each month in addition, at the call of its chairman or two other members, and at such other regular times as it may, by resolution determine. The Director of Law, or a member of his staff shall attend such meetings and serve as legal advisor to the Board.

(c) Quorum. The Board of Zoning Appeals shall require a quorum of three members at all its meetings, and a concurring vote of three members shall be necessary to effect an order.

(d) Witnesses. The Board of Zoning Appeals Chairman or acting Chairman may administer oaths and compel the attendance of witnesses in all matters coming before the Board.

(Ord. 89-1997. Passed 12-11-97.)

#### **1135.08 HERITAGE COMMISSION.**

(a) Authority. The Heritage Commission is authorized to act as the administrative board as provided by Charter, in addition to the following duties which may be amended from time to time by Council:

(1) To assure that any structure, subject to the provisions of this Chapter, that is created, moved, altered, or remodeled, shall comply with the standards and criteria related to design, orientation, dimensions and use of materials for those structures and related wall signs. This responsibility applies to:

A. Recognized Heritage Structures pursuant to the provisions of this Chapter; and

B. All structures within the Design Control Overlay District pursuant to the provisions of this Chapter and the applicable provisions of Chapter 1175.

(2) To promulgate, along with the City Administration, supplemental material, including illustrations, in the Design Control Overlay District Review Guidebook and other documents that further interpret the provisions of this Chapter and Chapter 1175.

(3) To review applications and make recommendations to City Council that are submitted to request inclusion as a Recognized Heritage Structure (RHS) or any request to have the structure removed as a RHS.

(4) To determine if proposed changes to a building or structure that are subject to the regulations in this Chapter, satisfy the criteria and standards to receive a Certificate of Appropriateness or a Certificate of Design Compliance.

(b) Additional Responsibilities. To promote, educate, and manage the unique historic characteristics of Tallmadge by, among other possibilities:

(1) Assembling and making available information pertaining to funds, from both public and private sources, available for restoration, alteration, and preservation.

(2) Conducting workshops and other programs to advise and assist property owners in the restoration and preservation of historic structures.

(3) Establishing an appropriate system of markers for historic structures.

(4) Preparing and distributing brochures and descriptive materials about the City's historic structures and to promote the public interest in the purposes set forth herein by carrying on a public relations program.

(5) Pre-approving colors, roofing, shingles, siding, and other materials that will be kept on file in the Tallmadge Zoning Department.

(6) Monitoring physical changes within the Design Control Overlay District and propose and recommend to the Tallmadge City Council changes and amendments in the Design Control Overlay District as conditions warrant.

(c) The Heritage Commission may seek professional services, once there is an appropriation of funds for such purposes, to employ a qualified, licensed architect or other qualified party to consult with and assist the Heritage Commission on any and all matters coming before it. If historic structures are involved, such architect shall be a qualified restoration architect. Such consultation and assistance shall be strictly advisory and the Commission shall not be bound by the recommendation.

(d) The Heritage Commission shall require a quorum of three members at all its meetings, and a concurring vote of three (3) members of the Heritage Commission shall be necessary to affect an order. The Chairman shall be entitled to be counted in determining a quorum and to vote as a member. No member, however, shall vote on requests for a Certificate of Appropriateness from any client the member is serving or from any business of which the member is an owner, corporate officer, agent or employee.

(e) The Heritage Commission Chairman or acting Chairman may administer oaths and compel the attendance of witnesses in all matters coming before the Commission.

(Ord. 70-2012. Passed 9-13-12.)

## **CHAPTER 1136**

### **Zoning Certificates**

**1136.01 Enforcement by the Zoning Inspector.**

**1136.02 Zoning certificates required; application.**

## CROSS REFERENCES

Variances, exceptions and appeals - see P. & Z. Ch. 1137

Nonconforming uses - see P. & Z. Ch. 1185

### **1136.01 ENFORCEMENT BY THE ZONING INSPECTOR.**

It shall be the duty of the Zoning Inspector to administer and enforce this Chapter in accordance with the provisions of this Chapter. All departments, officials, and public employees of the City vested with the duty and authority to issue permits or licenses, shall conform to the provisions of this Chapter.

(Ord. 89-1997. Passed 12-11-97.)

### **1136.02 ZONING CERTIFICATES REQUIRED; APPLICATION.**

The application for a zoning certificate shall be as follows:

- (a) Before constructing, changing the use of, or altering any building, including accessory buildings, or changing the use of any premises, applications shall be made to the Zoning Inspector for a zoning certificate. The application shall include the following information:
  - (1) A plot plan drawn to scale showing the exact dimensions of the lot to be built upon.
  - (2) The location, dimensions, height and bulk of structures to be erected.
  - (3) The intended use.
  - (4) The proposed number of sleeping rooms, dwelling units, occupants, employees, and other uses.
  - (5) The yard, open area and parking space dimensions.
  - (6) Any other pertinent data as may be necessary to determine and provide for the enforcement of this Zoning Code.
- (b) Within fourteen (14) days after the receipt of applications, the Zoning Inspector shall issue a zoning certificate if the application complies with the requirements of this Zoning Code and the application is accompanied by the proper fee as established by City Council.
- (c) The zoning certificate shall become void at the expiration of one year after date of issuance, unless construction is started. If no construction is started or use changed within one year of date of permit, a new permit is required upon proper application.
- (d) If the application is for a conditional zoning certificate, the application procedure defined in Section 1189.02 will be followed in lieu of the above regulations.

(Ord. 89-1997. Passed 12-11-97.)

## CHAPTER 1137

### **Variances, Exceptions and Appeals**

**1137.01 Variances.**

**1137.02 Exceptions.**

**1137.03 Appeals.**

**1137.04 Procedure.**

**1137.05 Data required with application.**

**1137.06 Processing by Zoning Department.**

**1137.07 Notice of public hearing in newspaper.**

**1137.08 Notice to parties of interest.**

**1137.09 Action by Board of Zoning Appeals.**

**1137.10 Reapplication.**

**1137.11 Expiration of variance.**

## CROSS REFERENCES

Council may amend districting or zoning - see Ohio R.C. 713.10

Appeals from zoning decisions - see Ohio R.C. 713.11, Ch. 2506

Amendments - see P. & Z. Ch. 1139

### **1137.01 VARIANCES.**

When practical difficulties, unnecessary hardship, or results inconsistent with the general purpose of this Zoning Code result through the strict and literal interpretation and enforcement of the provisions hereof, the Board of Zoning Appeals shall have authority, as an administrative act, subject to the provisions of this section, to grant, upon such conditions as it may determine, such variances from the provisions of this Zoning Code as may be in harmony with its general purpose and intent, so that the spirit of this Zoning Code shall be observed, public safety and welfare secured and substantial justice done.

- (a) In every instance of granting a variance by the Board of Zoning Appeals, there must be a showing by the Board that:
  - (1) The strict application of the provisions of this Zoning Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of this Zoning Code.
  - (2) There are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use or development of the property that do not apply generally to other properties or uses in the same zoning district or neighborhood.
  - (3) The granting of such variance will not be of substantial detriment to the public interest or to property or improvements in such district in which the variance is sought, and will not materially impair the purpose of this Zoning Code.
- (b) The Board of Zoning Appeals has no authority to authorize a change in the use of any parcel of land.

(Ord. 89-1997. Passed 12-11-97.)

### **1137.02 EXCEPTIONS.**

The Board of Zoning Appeals shall have the authority to make exceptions as specifically described herein. Where a district boundary line divides a lot in a single ownership at the time of the effective date of this Zoning Code, the Board of Zoning Appeals may permit a use authorized on either portion of such lot to extend no more than fifty feet into the other portion of the lot.

(Ord. 89-1997. Passed 12-11-97.)

#### **1137.03 APPEALS.**

(a) Appeals to the Board of Zoning Appeals may be taken by any person, firm, or corporation, or by any officer, Board, or department of the City, deeming himself or itself to be adversely affected by the decision of the administrative official or the Planning and Zoning Commission in granting or refusing to grant zoning permits. Notice of Appeals shall be filed with the Zoning Department within fifteen (15) days after the date of any adverse decision except when the fifteenth day falls on a Saturday, Sunday or a holiday, then the fifteenth day shall be deemed to be the next day of business thereafter. The appellant, except the City, shall post security for the cost of all action required for the hearing of the appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Planning and Zoning Commission or administrative officer whose decision is appealed from shall certify to the Board of Zoning Appeals after the notice of the appeal has been filed, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed by other than a restraining order granted by the Board of Zoning Appeals or by a court having lawful jurisdiction. Within its powers, the Board of Zoning Appeals may reverse or affirm, wholly or in part or modify the order, requirement, decision or determination as in its opinion ought to be done, and to that end shall have all the powers of the officers from whom the appeal is taken, and it may issue or direct the issuance of a permit or certificate.

(b) However, the Board of Zoning Appeals shall not make a finding, decision or determination reversing the decision of the Planning and Zoning Commission of the City on a matter involving a conditional zoning permit unless the finding, decision or determination of the Board of Zoning Appeals is made with the concurrence of three-fourths of the members of the Board of Zoning Appeals. The Board of Zoning Appeals shall decide all such appeals within sixty-five (65) days after date of hearing except that such time may be extended by mutual consent.

(Ord. 89-1997. Passed 12-11-97.)

#### **1137.04 PROCEDURE.**

The Board of Zoning Appeals shall act in accordance with the procedure specified by law including this Zoning Code. All appeals and applications for variances and exceptions made to the Board of Zoning Appeals shall be in writing and on the forms prescribed therefor, and shall be accompanied by a fee as established by City Council. In the event that the Board of Zoning Appeals will find it necessary to draw upon any planning, legal, engineering, or any other expert testimony, such fee shall be raised in order to cover all expenses of such expert testimony.

(Ord. 89-1997. Passed 12-11-97.)

#### **1137.05 DATA REQUIRED WITH APPLICATION.**

(a) Completion by applicant of application forms supplied by the Zoning Department.

(b) A plot plan within five hundred (500) feet of any part of the property affected.

(c) Applicant shall furnish the names and addresses of property owners within five hundred (500) feet of any part of the property affected.

(d) Applicant shall furnish a plot plan of the property with: existing and proposed lot dimensions; location, use, size and height of all existing and proposed structures; and, all contiguous properties with existing structures located thereon.

(e) Any additional data or information that the Board deems necessary for a decision to be rendered.

(Ord. 89-1997. Passed 12-11-97.)

#### **1137.06 PROCESSING BY ZONING DEPARTMENT.**

Upon the determination of the Zoning Department that all data requested has been submitted in accordance with these regulations, they shall undertake the following:

(a) Assign a case number, place the request upon the calendar for hearing and cause the notices stating the time, place and object of the hearing to be sent by mail to the parties making the request for appeal, variance, or exception, at least fourteen (14) days prior to the date of the scheduled hearing.

(b) Notify the Board of Zoning Appeals that a request has been filed. This shall include all relevant data.

(Ord. 89-1997. Passed 12-11-97.)

#### **1137.07 NOTICE OF PUBLIC HEARING IN NEWSPAPER.**

At least twenty (20) days notice of the hearing shall be provided in an appropriate newspaper of general circulation in the City. The Board 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, no further notice shall be required.

(Ord. 89-1997. Passed 12-11-97.)

#### **1137.08 NOTICE TO PARTIES OF INTEREST.**

Not less than fourteen (14) days prior to the date set for such hearing on variance, exception, or appeal, written notice of such hearing shall be caused by the Board to be given by mail to any person, firm or corporation owning premises located within five hundred (500) feet of the land to which such appeal or application relates. All notices shall be sent to the addresses given in the application.

(Ord. 89-1997. Passed 12-11-97.)

#### **1137.09 ACTION BY BOARD OF ZONING APPEALS.**

Every decision of the Board of Zoning Appeals shall be by resolution, each of which shall contain a full record of the findings of the Board of Zoning Appeals by case number under one or another of the following headings: Appeals, Exceptions; Variances with all documents pertaining thereto.

(Ord. 89-1997. Passed 12-11-97.)

#### **1137.10 REAPPLICATION.**

An application for a variance, exception, or appeal that has been denied wholly or in part by the Board of Zoning Appeals shall not be resubmitted until the expiration of twelve (12) months from date of such denial, except on grounds of newly discovered evidence or

proof of changed conditions which would be sufficient to justify reconsideration.  
(Ord. 89-1997. Passed 12-11-97.)

#### **1137.11 EXPIRATION OF VARIANCE.**

(a) A variance for a structure which has been granted shall automatically expire, if for any reason, construction of said structure has not commenced within twelve months from date of approval by Board of Zoning Appeals. A variance on lot size or area shall automatically expire if the lot has not been recorded within twelve months from date of approval by Board of Zoning Appeals.

(b) All variances granted by the Board of Zoning Appeals prior to December 11, 1997, shall expire for any structure, if for any reason, construction of such structure has not commenced prior to June 30, 2002.

(Ord. 108-2001. Passed 11-8-01.)

### **CHAPTER 1139**

#### **Amendments**

**1139.01 Council powers.**

**1139.02 Initiation of Zoning Code text amendments.**

**1139.03 Initiation of Zoning Map amendments.**

**1139.04 Procedure for making application.**

**1139.05 Data required with application.**

**1139.06 Processing by Zoning Inspector.**

**1139.07 Processing by Clerk of Council.**

**1139.08 Planning and Zoning Commission action.**

**1139.09 Public hearing by Council.**

**1139.10 Council action.**

**1139.11 Approval.**

**1139.12 Reapplication.**

**1139.13 Standards for Zoning Map amendments.**

#### **CROSS REFERENCES**

Council may amend districting or zoning - see Ohio R.C. 713.10

Appeals from zoning decisions - see Ohio R.C. 713.11, Ch. 2506

Council to hold public hearings - see Ohio R.C. 713.12

#### **1139.01 COUNCIL POWERS.**

Council may, from time to time, amend by ordinance the number, shape or area of districts established on the Zoning Map or the regulations set forth in this Zoning Code.

(Ord. 89-1997. Passed 12-11-97.)

#### **1139.02 INITIATION OF ZONING CODE TEXT AMENDMENTS.**

Amendments to this Zoning Code text may be initiated in one of the following ways:

(a) By adoption of a motion by the Planning and Zoning Commission;

(b) By adoption of a motion by Council for Planning and Zoning Commission recommendation.

(Ord. 89-1997. Passed 12-11-97.)

#### **1139.03 INITIATION OF ZONING MAP AMENDMENTS.**

Amendments to the Zoning Map may be initiated in one of the following ways:

(a) By adoption of a motion by the Planning and Zoning Commission;

(b) By adoption of a motion by Council for the Planning and Zoning Commission recommendation;

(c) By application with consent of the property owner of record.

(Ord. 89-1997. Passed 12-11-97.)

#### **1139.04 PROCEDURE FOR MAKING APPLICATION.**

Any application for amendment to this Zoning Code shall be submitted in accordance with the following procedures:

(a) Application Submitted to Zoning Inspector

(1) Any application shall be submitted to the Zoning Inspector who shall schedule meetings, send notice and insure the proper processing of the application as provided in this Zoning Code.

(2) All required data must be provided at least fourteen (14) days prior to the regularly scheduled meeting of the Planning and Zoning Commission.

(Ord. 89-1997. Passed 12-11-97.)

#### **1139.05 DATA REQUIRED WITH APPLICATION.**

(a) Completion by applicant of application forms supplied by the Zoning Inspector.

(b) If a Zoning Map change is involved, then twenty (20) copies of a site plan, plot plan or development plan of the entire property being considered, drawn to a reasonable scale and showing the location of all abutting streets, the location of all existing and proposed structures, the types of buildings and their uses must be submitted.

(c) If a Zoning Map change is involved, then twenty (20) copies of general plans and specifications for all proposed development and construction must be submitted.

(d) A statement supported by substantiating evidence that the present zoning is unreasonable.

(e) If a Zoning Map change is involved, a list of the names and addresses of the owners of properties lying within five hundred (500) feet of any part of the property on which the request is made must be submitted.

(f) If a Zoning Map change is involved, a vicinity map of the area within one thousand (1000) feet of any part of the property on which the zone change is requested.



(g) The application fee shall be as established by City Council. This fee shall not be refundable after the application has been placed on the agenda for Planning and Zoning Commission action. This fee shall not apply to any amendment introduced by a member of the Planning and Zoning Commission, member of Council or the Mayor.

(Ord. 89-1997. Passed 12-11-97.)

#### **1139.06 PROCESSING BY ZONING INSPECTOR.**

Upon the determination of the Zoning Inspector that all data requested has been submitted in accordance with these regulations, he shall undertake the following:

- (a) Notify Council through the Clerk of Council that a request has been filed. This notification shall include the petitioner's statement of support and such other data as is relevant.
- (b) Schedule the item on the agenda of the next appropriate meeting of the Planning and Zoning Commission.
- (c) If a Zoning Map change is involved, at least seven days prior to the first meeting of the Commission on the matter, the Zoning Department shall notify by mail all land owners within five hundred (500) feet of the request. Such notice shall explain the nature of the request and the time, date, and place of the Commission meeting at which the request will be discussed.

(Ord. 89-1997. Passed 12-11-97.)

#### **1139.07 PROCESSING BY CLERK OF COUNCIL.**

(a) Immediately upon notification by the Zoning Department that the request has been filed, the Clerk of Council shall inform the Planning and Zoning Committee of Council who shall immediately request the Law Director to prepare the necessary legislation.

(b) After the legislation is prepared the Clerk of Council shall immediately forward a copy thereof to the Planning and Zoning Commission for their consideration and recommendation.

(Ord. 89-1997. Passed 12-11-97.)

#### **1139.08 PLANNING AND ZONING COMMISSION ACTION**

The Commission shall consider all such ordinances and applications that have been properly submitted and recommend an action to Council within not less than twenty-eight (28) and not more than sixty (60) days of the date of the first meeting at which the ordinance was presented. The recommendations of the Commission shall be based upon the standards of Section 1139.13.

(Ord. 89-1997. Passed 12-11-97.)

#### **1139.09 PUBLIC HEARING BY COUNCIL.**

Council, upon receipt of a recommendation from the Planning and Zoning Commission, shall hold a public hearing.

(a) At least twenty (20) days notice of the hearing shall be provided in the appropriate newspaper of general circulation.

(b) If a Zoning Map change is involved, the Clerk of Council shall provide written notice at least fourteen (14) days before the hearing to all property owners within five hundred (500) feet of the request. Such notice shall include the nature of the request, the recommendation of the Planning and Zoning Commission, and the time, date and place of Council's public hearing.

(c) If a Zoning Map change is involved, at least ten (10) days before the public hearing the Clerk of Council shall cause to be posted a sign, three by five (3 x 5) feet in size setting forth the size of the property, existing zoning, proposed use and date of the public hearing.

(Ord. 89-1997. Passed 12-11-97.)

#### **1139.10 COUNCIL ACTION.**

Council, after the public hearing, shall deny or approve the request.

(a) If Council action is in accordance with the recommendation of the Planning and Zoning Commission, a majority vote of Council is needed for enactment.

(b) If Council by its action on the ordinance alters, departs or differs from the recommendation of the Planning and Zoning Commission such legislative act shall not take effect unless passed or approved by at least five affirmative votes of the membership of City Council.

(Ord. 89-1997. Passed 12-11-97.)

#### **1139.11 APPROVAL.**

Only upon a recommendation by the Planning Commission and conclusion of hearing procedures relative to a particular application may Council amend this Zoning Code.

(Ord. 89-1997. Passed 12-11-97.)

#### **1139.12 REAPPLICATION.**

No application for an amendment which has been denied wholly or in part by Council shall be resubmitted until the expiration of one year or more from the date of such denial, except on grounds of newly discovered evidence or proof of changed conditions which would be sufficient to justify reconsideration by the City.

(Ord. 89-1997. Passed 12-11-97.)

#### **1139.13 STANDARDS FOR ZONING MAP AMENDMENTS.**

Only recommendations made by the Planning and Zoning Commission shall be considered for map amendments. All recommendations by the Planning and Zoning Commission for Zoning Map amendments shall be consistent with the City of Tallmadge's adopted plans, goals, and policies and with the intent of this Code.

(a) Prior to making a recommendation on a proposed rezoning, the Planning and Zoning Commission shall make a finding to determine if the following conditions exist. No rezoning of land shall be approved prior to specific documents finding at least one (1) of the following:

(1) There has been a change in demand for land which alters the information upon which the Zoning Map is based.

(2) A study indicates that there has been an increase in the demand for land in the requested zoning district, and as a result, the supply of land within the City of Tallmadge mapped as such on the Zoning Map, is inadequate to meet the demands for such development.

- (3) Proposed uses cannot be accommodated by sites already zoned in the City due to lack of transportation or utilities or other development constraints, or the market to be served by the proposed use cannot be effectively served by the location of the existing zoning district.
- (4) There is an error in the Code text or Zoning Map as enacted.
- (b) In addition to the findings required to be made by subsection (b), findings shall be made by the Planning and Zoning Commission on each of the following matters based on the evidence presented:
  - (1) The extent to which the proposed amendment and proposed use are in compliance with and deviate from adopted plans, goals and policies.
  - (2) The suitability of the property in question for the uses permitted under the proposed zoning.
  - (3) The adequacy of public facilities such as transportation, utilities, and other required public services to serve the proposed use.
  - (4) The effect of the proposed rezoning on surrounding uses.
  - (5) The effect of the proposed rezoning on the economic viability of existing developed and vacant land within the City.
  - (6) Will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the same area;
  - (7) Will not be hazardous or disturbing to existing or future neighboring uses;
  - (8) Will not be detrimental to property in the immediate vicinity or to the community as a whole;
  - (9) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service;
  - (10) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets or roads.
  - (11) Limitations upon financial gain from the land in question shall not be sufficient to constitute unreasonable zoning.
  - (12) Evidence must support that the proposed amendment would materialize in a better land use.
- (c) The Planning and Zoning Commission shall not recommend the adoption of a proposed amendment unless it finds that the adoption of such an amendment is in the public interest and not solely for the interest of the applicant.  
(Ord. 89-1997. Passed 12-11-97.)

## **CHAPTER 1141**

### **Site Plan Review**

#### **1141.01 Applicability.**

#### **1141.02 Contents of site plan.**

#### **1141.03 Site plan review guidelines.**

#### **1141.04 Action by Planning and Zoning Commission for site plan review.**

### **CROSS REFERENCES**

Planning and Zoning Commission - see P. & Z. 1135.06

#### **1141.01 APPLICABILITY.**

This section shall apply to new property development and any expansion of parking lots and existing structures, except for one, two and three family dwellings.

(Ord. 89-1997. Passed 12-11-97.)

#### **1141.02 CONTENTS OF SITE PLAN.**

Before a building permit is issued for construction, the site plan at a scale appropriate for the scope of the project, and no smaller than 1 inch to 100 feet (1:100.) shall be filed with the Zoning Inspector setting forth, identifying and locating the following:

- (a) The total area in the development.
- (b) The existing zoning of the property in question and/or all adjacent properties.
- (c) All public and private right-of-way and easement lines located on or adjacent to the property which is proposed to be continued, created, relocated or abandoned.
- (d) Existing topography with a maximum of five two foot contour intervals.
- (e) The proposed finished grade of the development shown by contours not larger than two feet.
- (f) The locations of all existing and proposed buildings in the described parcels, the uses to be contained therein and the total number of buildings including dimensions, heights, gross floor area and number of stories.
- (g) Location and dimension of all curb cuts, driving lanes, off-street parking and loading areas including the number of spaces, angles of stalls, grades, surfacing materials, drainage plans, and illumination of facilities.
- (h) All sidewalks and other open areas.
- (i) Location of all walls, fences, and buffer yards.
- (j) Location, size, height, lighting, and orientation of all signs.
- (k) Location of all existing and proposed streets, highways and alleys.
- (l) All existing and proposed water and sanitary sewer lines indicating pipe sizes, types and grades.
- (m) The schedule of phasing of the project.
- (n) Any proposed landscaping elements to be included in the project.
- (o) Such other information as required by the Planning and Zoning Commission to determine the conformance with this Code.
- (p) The Zoning Department will submit site plan review to the Crime Prevention Officer for recommendations to Planning and Zoning Commission.

(Ord. 89-1997. Passed 12-11-97.)

#### **1141.03 SITE PLAN REVIEW GUIDELINES.**

The following principles shall guide the exercise of site planning review by the Planning and Zoning Commission:

- (a) The natural topographic and landscape features of the site shall be incorporated into the plan and the development.
  - (b) Buildings and open spaces should be in proportion and in scale with existing structures and spaces in the area within three hundred (300) feet of the development site.
  - (c) A site that has an appearance of being congested, over built or cluttered can evolve into a blighting influence and therefore such should not be congested, over built or cluttered.
  - (d) Open spaces should be linked together.
  - (e) Natural separation should be preserved or created on the site by careful planning of the streets and clustering of buildings using natural features and open spaces for separation. Existing vegetation removal should be kept to a minimum.
  - (f) Screening of intensive uses should be provided by utilizing landscaping, fences or walls to enclose internal areas.
  - (g) Buildings should be sited in an orderly, non-random fashion. Long, unbroken building facades should be avoided.
  - (h) In connection with the siting of multiple story buildings, the location should be oriented to maximize the privacy of the occupants of adjacent buildings.
  - (i) Pedestrian circulation in non-residential areas should be arranged so that off-street parking areas are located within a convenient walking distance of the use being served. Handicapped parking should be located as near as possible to be accessible to the structure. Pedestrian and vehicular circulation should be separated as much as possible, through crosswalks designated by pavement markings, signalization or complete grade separation.
  - (j) Path and sidewalk street crossings should be located where there is a good sight distance along the road, preferably away from sharp bends or sudden changes in grade.
  - (k) Parking lots and garages should be located in such a way as to provide safe, convenient ingress and egress. Whenever possible there should be a sharing of curb cuts of more than one facility. Parking areas should be screened and landscaped and traffic islands should be provided to protect circulating vehicles and to break up the monotony of continuously paved areas.
  - (l) Drive through establishments such as restaurants and banks should be located to allow enough automobile waiting space for peak hour operation without interference with other parking lot circulations.
- (Ord. 89-1997. Passed 12-11-97.)

**1141.04 ACTION BY PLANNING AND ZONING COMMISSION FOR SITE PLAN REVIEW.**

The Planning and Zoning Commission shall act upon all site plans within thirty-five (35) days after the receipt of the complete application from the Zoning Inspector . The Planning and Zoning Commission may approve, disapprove or approve with modifications the site plan as submitted. The Planning and Zoning Commission may extend the time for review with the consent of the applicant.

(Ord. 89-1997. Passed 12-11-97.)

**TITLE FIVE - Zoning Districts and Regulations**

- Chap. 1151. District Establishment and Map.
- Chap. 1153. R-1 Residential District.
- Chap. 1154. R-2 Residential District.
- Chap. 1155. R-3 Residential District.
- Chap. 1157. R-4 Residential District.
- Chap. 1159. R-5 Residential District.
- Chap. 1160. R-6 Residential Open Space Planned Development District.
- Chap. 1161. C-3 General Commercial District.
- Chap. 1163. C-4 Automotive Oriented Commercial District.
- Chap. 1165. C-5 Highway Interchange Commercial District.
- Chap. 1167. I-1 Industrial District.
- Chap. 1175. Design Control Overlay District (DOCD).
- Chap. 1177. Recognized Heritage Structures and Design Criteria.

**CHAPTER 1151**

**District Establishment and Map**

- 1151.01 Division of City into Districts.**
- 1151.02 Official Zoning Map.**
- 1151.03 Interpretation of district boundaries.**
- 1151.04 Lot divided, extension of district.**
- 1151.05 Uncertainty as to boundaries.**
- 1151.06 Vacated street or alley.**
- 1151.07 Annexations.**
- 1151.08 Conformance with regulations.**

**CROSS REFERENCES**

Zoning of annexed areas - see Ohio R.C. 303.25, 519.18  
 Basis of districts - see Ohio R.C. 713.10

**1151.01 DIVISION OF CITY INTO DISTRICTS.**

The City is hereby divided into nine use districts as follows:

- R-1 Residential District
- R-2 Residential District
- R-3 Residential District
- R-4 Residential District

|     |   |
|-----|---|
| R-5 | Residential District                    |
| C-3 | General Commercial District             |
| C-4 | Automotive Oriented Commercial District |
| C-5 | Highway Interchange Commercial District |
| I-1 | Industrial District                     |

(Ord. 89-1997. Passed 12-11-97.)

**1151.02 OFFICIAL ZONING MAP.**

The districts established in Section 1151.01 are shown on the Official Zoning Map which, together with all explanatory matter therein, is hereby adopted as part of this Zoning Code and is hereby incorporated by reference into this Zoning Code. The Official Zoning Map, properly attested, shall remain on file in the office of the Zoning Inspector or his/her designee.

(Ord. 89-1997. Passed 12-11-97.)

**1151.03 INTERPRETATION OF DISTRICT BOUNDARIES.**

Except where referenced on the map to a street or alley line or other designated line by dimensions shown on the map, the district boundary lines follow lot lines or the center lines of streets or alleys as they existed at the time of adoption of this Chapter, but where a district line obviously does not coincide with the lot lines as such, or center lines of streets or alleys, or where it is not designated by dimensions, it shall be determined by the use of the engineer's scale as measured on the Official Zoning Map.

(Ord. 89-1997. Passed 12-11-97.)

**1151.04 LOT DIVIDED, EXTENSION OF DISTRICT.**

Where a district boundary line established in this section or as shown on the Zoning Map divides a lot which was in single ownership at the time of enactment of this Chapter, the use authorized thereon and the other district requirements applying to the more restricted portion of such lot under this Chapter shall be considered as extending to the entire lot.

(Ord. 89-1997. Passed 12-11-97.)

**1151.05 UNCERTAINTY AS TO BOUNDARIES.**

All questions concerning the exact location of district boundary lines, shall be determined by the Zoning Inspector with appeals to the Board of Zoning Appeals according to rules and regulations which may be adopted by it.

(Ord. 89-1997. Passed 12-11-97.)

**1151.06 VACATED STREET OR ALLEY.**

Whenever any street, alley, or other public way is vacated by official action as provided by law, the zoning district adjoining the side of such public way shall be extended automatically, depending on the side or sides to which such lands revert, to include the right-of-way thus vacated, which shall thenceforth be subject to all regulations of the extended district.

(Ord. 89-1997. Passed 12-11-97.)

**1151.07 ANNEXATIONS.**

Any territory annexed or by merger to the City shall, on the effective date of such annexation or merger, be zoned to the nearest classification of the current zoning as determined by the Planning and Zoning Commission and Council.

(Ord. 89-1997. Passed 12-11-97.)

**1151.08 CONFORMANCE WITH REGULATIONS.**

Except as hereinafter specified, no land, building, structure, or premises, shall hereafter be used, and no building or part thereof, or other structure, shall be located, erected, moved, reconstructed, extended, enlarged, or altered except in conformity with the regulations herein specified for the district in which it is located.

(Ord. 89-1997. Passed 12-11-97.)

**CHAPTER 1153**

**R-1 Residential District**

- 1153.01 Purpose.**
- 1153.02 Permitted principal uses.**
- 1153.03 Permitted accessory uses.**
- 1153.04 Conditionally permitted uses.**
- 1153.05 Minimum lot area.**
- 1153.06 Minimum lot depth.**
- 1153.07 Minimum front yard setback.**
- 1153.08 Minimum rear yard setback.**
- 1153.09 Minimum side yard setback.**
- 1153.10 Minimum living floor area per dwelling.**
- 1153.11 Maximum height regulations.**

**CROSS REFERENCES**

- Sign regulations - see P. & Z. Ch. 1183
- Nonconforming uses - see P. & Z. Ch. 1185
- Off-street parking and loading - see P. & Z. Ch. 1187
- Conditional uses - see P. & Z. Ch. 1189
- Supplemental regulations - see P. & Z. Ch. 1191

**1153.01 PURPOSE.**

The purpose of this district is to provide for low density residential development and agricultural uses in the outlying portions of the community.

(Ord. 89-1997. Passed 12-11-97.)

**1153.02 PERMITTED PRINCIPAL USES.**

- (a) Agriculture.
  - (b) Single family residential dwellings
- (Ord. 89-1997. Passed 12-11-97.)

**1153.03 PERMITTED ACCESSORY USES.**

- (a) Any use, building or structure which is clearly incidental to the principally permitted use on the lot.
  - (b) Home occupations. (Ord. 89-1997. Passed 12-11-97.)
  - (c) Accumulative area for all accessory buildings shall not exceed 900 sq. ft. The accumulative area of all accessory buildings located within the rear yard shall not exceed 20% of the rear yard area. For computing the accumulative area, if a detached accessory building is connected to the principal building by a breezeway or other similar structure, the ground area of such breezeway shall be considered as a part of the accessory building and shall be included in the computation.
- (Ord. 86-2011. Passed 11-10-11.)

**1153.04 CONDITIONALLY PERMITTED USES.**

Conditionally permitted uses, subject to the specified Subsections in Chapter 1189, are as follows:

- (a) Religious places of worship; 102, 103, 105, 107, 108, 113, 114.
  - (b) Educational institutions; 102, 103, 105, 107, 108, 113.
  - (c) Privately owned parks, playgrounds, golf courses, swimming pools; 102, 103, 105, 106, 107, 108, 113, 115.
  - (d) Public utilities, rights-of-way, and pertinent structures; 102, 112, 113.
  - (e) Cemeteries; 102, 105, 106, 108.
  - (f) Government owned buildings and facilities; 105, 108, 110, 113.
  - (g) Government owned parks and playgrounds; 102, 105, 110, 113.
  - (h) Non-commercial recreation facility; 102, 103, 105, 106, 107, 108, 113, 115.
  - (i) Bed and breakfast establishments; 102, 106, 107, 108, 113, 115, 119.
  - (j) Any use similar in nature to a conditionally permitted use in this district as pursuant to Section 1189.06, Similar Permitted and Conditionally Permitted Uses.
- (Ord. 85-2004. Passed 11-11-04.)

**1153.05 MINIMUM LOT AREA.**

- (a) 20,000 square feet
- (Ord. 89-1997. Passed 12-11-97.)

**1153.06 MINIMUM LOT WIDTH.**

- (a) 100 feet at street right-of-way.
  - (b) 70 feet at street right-of-way on cul-de-sacs and curves.
  - (c) 100 feet at minimum front yard setback.
  - (d) 120 feet at minimum front yard setback along both streets for corner lots.
- (Ord. 89-1997. Passed 12-11-97.)

**1153.07 MINIMUM FRONT YARD SETBACK.**

- (a) 50 feet from the proposed right-of-way per Tallmadge Thoroughfare Plan.
  - (b) 35 feet on cul-de-sac lots.
- (Ord. 89-1997. Passed 12-11-97.)

**1153.08 MINIMUM REAR YARD SETBACK.**

- (a) 25 feet.
- (Ord. 89-1997. Passed 12-11-97.)

**1153.09 MINIMUM SIDE YARD SETBACK.**

- (a) 10 feet.
- (Ord. 89-1997. Passed 12-11-97.)

**1153.10 MINIMUM LIVING FLOOR AREA PER DWELLING.**

- (a) One story: 1,000 square feet.
  - (b) One and one-half story, main or ground floor area: 800 square feet.
  - (c) Two story: 1,500 square feet.
- (Ord. 89-1997. Passed 12-11-97.)

**1153.11 MAXIMUM HEIGHT REGULATIONS.**

- (a) 35 feet.
- (Ord. 89-1997. Passed 12-11-97.)

**CHAPTER 1154**

**R-2 Residential District**

**1154.01 Purpose.**

**1154.02 Permitted principal uses.**

**1154.03 Permitted accessory uses.**

**1154.04 Conditionally permitted uses.**

- 1154.05 Minimum lot area.**
- 1154.06 Minimum lot depth.**
- 1154.07 Minimum front yard setback.**
- 1154.08 Minimum rear yard setback.**
- 1154.09 Minimum side yard setback.**
- 1154.10 Minimum living floor area per dwelling.**
- 1154.11 Maximum height regulations.**

CROSS REFERENCES

- Sign regulations - see P. & Z. Ch. 1183
- Nonconforming uses - see P. & Z. Ch. 1185
- Off-street parking and loading - see P. & Z. Ch. 1187
- Conditional uses - see P. & Z. Ch. 1189
- Supplemental regulations - see P. & Z. Ch. 1191

**1154.01 PURPOSE.**

The purpose of this district is to accommodate a lower density of residential development in sections of the community which are already partially developed. This density would encourage development which would be similar to that already existing. All public utilities and facilities will be planned and designed to serve adequately the above population density only.

(Ord. 89-1997. Passed 12-11-97.)

**1154.02 PERMITTED PRINCIPAL USES.**

- (a) Single family residential dwellings.

(Ord. 89-1997. Passed 12-11-97.)

**1154.03 PERMITTED ACCESSORY USES.**

- (a) Any use, building or structure which is clearly incidental to the permitted principal use on the lot.
- (b) Home occupations. (Ord. 89-1997. Passed 12-11-97.)
- (c) Accumulative area for all accessory buildings shall not exceed 900 sq. ft. The accumulative area of all accessory buildings located within the rear yard shall not exceed 20% of the rear yard area. For computing the accumulative area, if a detached accessory building is connected to the principal building by a breezeway or other similar structure, the ground area of such breezeway shall be considered as a part of the accessory building and shall be included in the computation.

(Ord. 86-2011. Passed 11-10-11.)

**1154.04 CONDITIONALLY PERMITTED USES.**

Conditionally permitted uses, subject to the specified subsections in Chapter 1189, are as follows:

- (a) Religious places of worship; 102, 103, 105, 107, 108, 113, 114.
- (b) Educational institutions; 102, 103, 105, 107, 108, 113.
- (c) Privately owned parks, playgrounds, golf courses, swimming pools; 102, 103, 105, 106, 107, 108, 113, 115.
- (d) Public utilities, rights-of-way, and pertinent structures; 102, 112, 113.
- (e) Cemeteries; 102, 105, 106, 108.
- (f) Government owned buildings and facilities; 105, 108, 110, 113.
- (g) Government owned parks and playgrounds; 102, 105, 110, 113.
- (h) Non-commercial recreation facility; 102, 103, 105, 106, 107, 108, 113, 115.
- (i) Bed and breakfast establishments; 102, 106, 107, 108, 113, 115, 119.
- (j) Any use similar in nature to a conditionally permitted use in this district as pursuant to Section 1189.06, Similar Permitted and

Conditionally Permitted Uses.

(Ord. 85-2004. Passed 11-11-04.)

**1154.05 MINIMUM LOT AREA.**

- (a) 20,000 square feet.

(Ord. 89-1997. Passed 12-11-97.)

**1154.06 MINIMUM LOT WIDTH.**

- (a) 100 feet at street right-of-way.
- (b) 70 feet at street right-of-way on cul-de-sacs and curves.
- (c) 100 feet at minimum front yard setback.
- (d) 120 feet at minimum front yard setback along both streets for corner lots.

(Ord. 89-1997. Passed 12-11-97.)

**1154.07 MINIMUM FRONT YARD SETBACK.**

- (a) 50 feet from the proposed right-of-way per Tallmadge Thoroughfare Plan.
- (b) 35 feet on cul-de-sac lots.

(Ord. 89-1997. Passed 12-11-97.)

**1154.08 MINIMUM REAR YARD SETBACK.**

- (a) 25 feet.

(Ord. 89-1997. Passed 12-11-97.)

**1154.09 MINIMUM SIDE YARD SETBACK.**

- (a) 10 feet.

(Ord. 89-1997. Passed 12-11-97.)

**1154.10 MINIMUM LIVING FLOOR AREA PER DWELLING.**

- (a) One story: 1,000 square feet.
- (b) One and one-half story, main or ground floor area: 800 square feet.
- (c) Two story: 1,500 square feet.  
(Ord. 89-1997. Passed 12-11-97.)

**1154.11 MAXIMUM HEIGHT REQUIREMENTS.**

- (a) 35 feet.  
(Ord. 89-1997. Passed 12-11-97.)

**CHAPTER 1155**

**R-3 Residential District**

- 1155.01 Purpose.**
- 1155.02 Permitted principal uses.**
- 1155.03 Permitted accessory uses.**
- 1155.04 Conditionally permitted uses.**
- 1155.05 Minimum lot area.**
- 1155.06 Minimum lot depth.**
- 1155.07 Minimum front yard setback.**
- 1155.08 Minimum rear yard setback.**
- 1155.09 Minimum side yard setback.**
- 1155.10 Minimum living floor area per dwelling.**
- 1155.11 Maximum height regulations.**

**CROSS REFERENCES**

- Sign regulations - see P. & Z. Ch. 1183
- Nonconforming uses - see P. & Z. Ch. 1185
- Off-street parking and loading - see P. & Z. Ch. 1187
- Conditional uses - see P. & Z. Ch. 1189
- Supplemental regulations - see P. & Z. Ch. 1191

**1155.01 PURPOSE.**

The purpose of this district is to provide for low to medium density residential development in portions of the community that are already partially developed.  
(Ord. 89-1997. Passed 12-11-97.)

**1155.02 PERMITTED PRINCIPAL USES.**

- (a) Single family residential dwellings.  
(Ord. 89-1997. Passed 12-11-97.)

**1155.03 PERMITTED ACCESSORY USES.**

- (a) Any use, building or structure which is clearly incidental to the principally permitted use on the lot.
- (b) Home occupations. (Ord. 89-1997. Passed 12-11-97.)
- (c) Accumulative area for all accessory buildings shall not exceed 900 sq. ft. The accumulative area of all accessory buildings located within the rear yard shall not exceed 20% of the rear yard area. For computing the accumulative area, if a detached accessory building is connected to the principal building by a breezeway or other similar structure, the ground area of such breezeway shall be considered as a part of the accessory building and shall be included in the computation.  
(Ord. 86-2011. Passed 11-10-11.)

**1155.04 CONDITIONALLY PERMITTED USES.**

Conditionally permitted uses, subject to the specified subsections in Chapter 1189, are as follows:

- (a) Religious places of worship; 102, 103, 105, 107, 108, 113, 114.
- (b) Educational institutions; 102, 103, 105, 107, 108, 113.
- (c) Privately owned parks, playgrounds, golf courses, swimming pools; 102, 103, 105, 106, 107, 108, 113, 115.
- (d) Public utilities, rights-of-way, and pertinent structures; 102, 112, 113.
- (e) Cemeteries; 102, 105, 106, 108.
- (f) Government owned buildings and facilities; 105, 108, 110, 113.
- (g) Government owned parks and playgrounds; 102, 105, 110, 113.
- (h) Non-commercial recreation facility; 102, 103, 105, 106, 107, 108, 113, 115.
- (i) Planned residential development; 102, 105, 108, 111, 113, 118.
- (j) Bed and breakfast establishments; 102, 106, 107, 108, 113, 115, 119.
- (k) Any use similar in nature to a conditionally permitted use in this district as pursuant to Section 1189.06, Similar Permitted and Conditionally Permitted Uses.  
(Ord. 85-2004. Passed 11-11-04.)

**1155.05 MINIMUM LOT AREA.**

- (a) 16,000 square feet.  
(Ord. 89-1997. Passed 12-11-97.)

**1155.06 MINIMUM LOT WIDTH.**

- (a) 100 feet at street right-of-way.
  - (b) 60 feet at street right-of-way on cul-de-sacs and curves.
  - (c) 100 feet at minimum front yard setback.
  - (d) 120 feet at minimum front yard setback along both streets for corner lots.
- (Ord. 89-1997. Passed 12-11-97.)

**1155.07 MINIMUM FRONT YARD SETBACK.**

- (a) 50 feet from the proposed right-of-way per Tallmadge Thoroughfare Plan.
  - (b) 35 feet on cul-de-sac lots.
- (Ord. 89-1997. Passed 12-11-97.)

**1155.08 MINIMUM REAR YARD SETBACK.**

- (a) 25 feet.
- (Ord. 89-1997. Passed 12-11-97.)

**1155.09 MINIMUM SIDE YARD SETBACK.**

- (a) 10 feet.
- (Ord. 89-1997. Passed 12-11-97.)

**1155.10 MINIMUM LIVING FLOOR AREA PER DWELLING.**

- (a) One story: 1,000 square feet.
  - (b) One and one-half story, main or ground floor area: 800 square feet.
  - (c) Two story: 1,500 square feet.
- (Ord. 89-1997. Passed 12-11-97.)

**1155.11 MAXIMUM HEIGHT REGULATIONS.**

- (a) 35 feet.
- (Ord. 89-1997. Passed 12-11-97.)

**CHAPTER 1157**

**R-4 Residential District**

- 1157.01 Purpose.**
- 1157.02 Permitted principal uses.**
- 1157.03 Permitted accessory uses.**
- 1157.04 Conditionally permitted uses.**
- 1157.05 Minimum lot area.**
- 1157.06 Minimum lot depth.**
- 1157.07 Minimum front yard setback.**
- 1157.08 Minimum rear yard setback.**
- 1157.09 Minimum side yard setback.**
- 1157.10 Minimum living floor area per dwelling.**
- 1157.11 Maximum height regulations.**

**CROSS REFERENCES**

- Sign regulations - see P. & Z. Ch. 1183
- Nonconforming uses - see P. & Z. Ch. 1185
- Off-street parking and loading - see P. & Z. Ch. 1187
- Conditional uses - see P. & Z. Ch. 1189
- Supplemental regulations - see P. & Z. Ch. 1191

**1157.01 PURPOSE.**

The purpose of this district is to accommodate single-family residential dwellings of the character and type that presently exist near the central parts of the community. The density to be encouraged will be approximately three and one-half families per acre and all public utilities and facilities will be planned and designed to service adequately the above population density only.

(Ord. 89-1997. Passed 12-11-97.)

**1157.02 PERMITTED PRINCIPAL USES.**

- (a) Single family residential dwellings.
- (Ord. 89-1997. Passed 12-11-97.)

**1157.03 PERMITTED ACCESSORY USES.**

- (a) Any use, building or structure which is clearly incidental to the principally permitted use on the lot.
  - (b) Home occupations. (Ord. 89-1997. Passed 12-11-97.)
  - (c) Accumulative area for all accessory buildings shall not exceed 900 sq. ft. The accumulative area of all accessory buildings located within the rear yard shall not exceed 20% of the rear yard area. For computing the accumulative area, if a detached accessory building is connected to the principal building by a breezeway or other similar structure, the ground area of such breezeway shall be considered as a part of the accessory building and shall be included in the computation.
- (Ord. 86-2011. Passed 11-10-11.)

**1157.04 CONDITIONALLY PERMITTED USES.**

Conditionally permitted uses, subject to the specified Subsections in Chapter 1189, are as follows:

- (a) Religious places of worship; 102, 103, 105, 107, 108, 113, 114.
- (b) Educational institutions; 102, 103, 105, 107, 108, 113.



- (c) Privately owned parks, playgrounds, golf courses, swimming pools; 102, 103, 105, 106, 107, 108, 113, 115.
  - (d) Public utilities, rights-of-way, and pertinent structures; 102, 112, 113.
  - (e) Cemeteries; 102, 105, 106, 108.
  - (f) Government owned buildings and facilities; 105, 108, 110, 113.
  - (g) Government owned parks and playgrounds; 102, 105, 110, 113.
  - (h) Non-commercial recreation facility; 102, 103, 105, 106, 107, 108, 113, 115.
  - (i) Planned residential development; 102, 105, 108, 111, 113, 118.
  - (j) Bed and breakfast establishments; 102, 106, 107, 108, 113, 115, 119.
  - (k) Any use similar in nature to a conditionally permitted use in this district as pursuant to Section 1189.06, Similar Permitted and Conditionally Permitted Uses.
- (Ord. 85-2004. Passed 11-11-04.)

**1157.05 MINIMUM LOT AREA.**

- (a) 13,500 square feet.
  - (b) 15,000 square feet for corner lots.
- (Ord. 89-1997. Passed 12-11-97.)

**1157.06 MINIMUM LOT WIDTH.**

- (a) 80 feet at street right-of-way.
  - (b) 55 feet at street right-of-way on cul-de-sacs and curves.
  - (c) 80 feet at minimum front yard setback.
  - (d) 120 feet at minimum front yard setback along both streets for corner lots.
- (Ord. 89-1997. Passed 12-11-97.)

**1157.07 MINIMUM FRONT YARD SETBACK.**

- (a) 50 feet from the proposed right-of-way per Tallmadge Thoroughfare Plan.
  - (b) 35 feet on cul-de-sac lots.
- (Ord. 89-1997. Passed 12-11-97.)

**1157.08 MINIMUM REAR YARD SETBACK.**

- (a) 25 feet.
- (Ord. 89-1997. Passed 12-11-97.)

**1157.09 MINIMUM SIDE YARD SETBACK.**

- (a) 10 feet.
- (Ord. 89-1997. Passed 12-11-97.)

**1157.10 MINIMUM LIVING FLOOR AREA PER DWELLING.**

- (a) One story: 1,000 square feet.
  - (b) One and one-half story, main or ground floor area: 800 square feet.
  - (c) Two story: 1,500 square feet.
- (Ord. 89-1997. Passed 12-11-97.)

**1157.11 MAXIMUM HEIGHT REGULATIONS.**

- (a) 35 feet.
- (Ord. 89-1997. Passed 12-11-97.)

**CHAPTER 1159**

**R-5 Residential District**

- 1159.01 Purpose.**
- 1159.02 Permitted principal uses.**
- 1159.03 Permitted accessory uses.**
- 1159.04 Conditionally permitted uses.**
- 1159.05 Minimum lot area.**
- 1159.06 Minimum lot width.**
- 1159.07 Minimum front yard setback.**
- 1159.08 Minimum rear yard setback.**
- 1159.09 Minimum side yard setback.**
- 1159.10 Maximum height regulations.**
- 1159.11 Supplemental regulations for multi-family dwellings.**

**CROSS REFERENCES**

- Sign regulations - see P. & Z. Ch. 1183
- Nonconforming uses - see P. & Z. Ch. 1185
- Off-street parking and loading - see P. & Z. Ch. 1187
- Conditional uses - see P. & Z. Ch. 1189
- Supplemental regulations - see P. & Z. Ch. 1191

The regulations set forth in this Chapter apply only to lots and land zoned R-5. Additional R-5 zoning is prohibited. All lots and lands which may be developed at some future time as multi-family residential shall be subject to the requirements for Planned Developments (PRD) as set forth in Tallmadge Codified Ordinance Section 1189.04 and other pertinent sections of the Zoning Ordinance.

**1159.01 PURPOSE.**

The purpose of this district is to accommodate two-family and multi-family residential dwellings. The density to be encouraged will be approximately four dwelling units per acre for two-family dwellings and seven dwelling units per acre for multi-family dwellings. Centralized water and sewer shall be required in this district. A group or cluster of three or more two-family or multi-family dwellings shall be required.

(Ord. 89-1997. Passed 12-11-97.)

**1159.02 PERMITTED PRINCIPAL USES.**

- (a) Two-family residential dwellings.
- (b) Multi-family residential dwellings.

(Ord. 89-1997. Passed 12-11-97.)

**1159.03 PERMITTED ACCESSORY USES.**

- (a) Any use, building or structure which is clearly incidental to the principally permitted use on the lot.
- (b) Home occupations.

(Ord. 89-1997. Passed 12-11-97.)

**1159.04 CONDITIONALLY PERMITTED USES.**

Conditionally permitted uses, subject to the specified Subsections in Chapter 1189, are as follows:

- (a) Religious places of worship; 102, 103, 105, 107, 108, 113, 114.
- (b) Educational institutions; 102, 103, 105, 107, 108, 113.
- (c) Privately owned parks, playgrounds, golf courses, swimming pools; 102, 103, 105, 106, 107, 108, 113, 115.
- (d) Public utilities, rights-of-way, and pertinent structures; 102, 112, 113.
- (e) Cemeteries; 102, 105, 106, 108.
- (f) Government owned buildings and facilities; 105, 108, 110, 113.
- (g) Government owned parks and playgrounds; 102, 105, 110, 113.
- (h) Non-commercial recreation facility; 102, 103, 105, 106, 107, 108, 113, 115.
- (i) Planned residential development; 102, 105, 108, 111, 113, 118.
- (j) Bed and breakfast establishments; 102, 106, 107, 108, 113, 115, 119.
- (k) Any use similar in nature to a conditionally permitted use in this district as pursuant to Section 1189.06, Similar Permitted and Conditionally Permitted Uses.

(Ord. 85-2004. Passed 11-11-04.)

**1159.05 MINIMUM LOT AREA.**

- (a) Two-family dwellings shall have a minimum lot area of 20,000 square feet for the first two-family dwelling and 10,000 square feet for each additional two-family dwelling
- (b) Multi-family dwellings shall have a minimum lot area of 20,000 square feet for the first two units with an additional:
  - (1) 3,000 square feet for each additional efficiency unit or one bedroom unit;
  - (2) 5,000 square feet for each additional two bedroom unit; and
  - (3) 7,000 square feet for each additional three bedroom unit; and
  - (4) 8,000 square feet for each additional four bedroom unit
- (c) Other uses shall have a minimum lot area of 20,000 square feet.

(Ord. 89-1997. Passed 12-11-97.)

**1159.06 MINIMUM LOT WIDTH.**

- (a) 150 feet.

(Ord. 89-1997. Passed 12-11-97.)

**1159.07 MINIMUM FRONT YARD SETBACK.**

- (a) 50 feet from the proposed right-of-way per Tallmadge Thoroughfare Plan.
- (b) 35 feet on cul-de-sac lots.

(Ord. 89-1997. Passed 12-11-97.)

**1159.08 MINIMUM REAR YARD SETBACK.**

- (a) 25 feet.

(Ord. 89-1997. Passed 12-11-97.)

**1159.09 MINIMUM SIDE YARD SETBACK.**

- (a) 15 feet.

(Ord. 89-1997. Passed 12-11-97.)

**1159.10 MAXIMUM HEIGHT REGULATIONS.**

- (a) 35 feet.

(Ord. 89-1997. Passed 12-11-97.)

**1159.11 SUPPLEMENTAL REGULATIONS FOR MULTI-FAMILY DWELLINGS.**

The following supplemental regulations for multi-family dwellings shall apply in this district:

- (a) Usable Open Space and Recreation. Usable outdoor open space, other than parking areas and drives, shall be provided for the residents. Such open space shall not be located in the required front and side yards and shall amount to at least one-fourth of the lot area required for the dwellings. Any recreation facilities provided for the residents, such as swimming pools, tennis courts and club houses shall be open only between the hours of 10:00 a.m. and 10:00 p.m. daily except Saturdays when the hours may be 10:00 a.m. to 12:00 midnight.
- (b) Fire Protection. On site fire hydrants and other protective devices shall be provided as directed by Council.

- (c) Sound Systems. There shall be no exterior or outside public address, music or sound amplifying systems.
- (d) Additional Regulations. Such other regulations and conditions relative to access drives, snow removal, outside lighting, trash, landscaping, trees, topography, privacy, building design, antennas, location of recreational areas and facilities, utilities and drainage are as imposed by Council in the Ordinance rezoning such premises.
- (Ord. 89-1997. Passed 12-11-97.)

## CHAPTER 1160

### R-6 Residential Open Space Planned Development Districts

- 1160.01 Purpose.**
- 1160.02 Establishment of an R-2 Residential Open Space Planned Development District.**
- 1160.03 Minimum project area.**
- 1160.04 Dwelling types and permitted land uses.**
- 1160.05 Density.**
- 1160.06 Open space requirements.**
- 1160.07 Development standards.**
- 1160.08 Street requirements.**
- 1160.09 Homeowners associations.**
- 1160.10 Phased development.**
- 1160.11 Zoning amendment procedures and approval criteria.**
- 1160.12 Procedures for final development plan review.**
- 1160.13 Development plan review criteria.**
- 1160.14 Transfer of development rights.**
- 1160.15 Waivers.**

#### CROSS REFERENCES

- Sign regulations - see P. & Z. Ch. 1183
- Nonconforming uses - see P. & Z. Ch. 1185
- Off-street parking and loading - see P. & Z. Ch. 1187
- Conditional uses - see P. & Z. Ch. 1189
- Supplemental regulations - see P. & Z. Ch. 1191

#### **1160.01 PURPOSE.**

(a) Purpose. The R-6 Residential Open Space Planned Development District (ROSPDD) regulations are based on the premise that the ultimate quality of a built environment or development proposal is determined not only by the type, character and allocation of land uses, but also by the way in which such land uses are arranged. In many cases, the subdivision regulations and standard zoning district regulations and procedures do not adequately regulate the development of a site or the design flexibility that are appropriate for portions of the City of Tallmadge.

Therefore, the specific purposes of the R-6 ROSPDD regulations are to:

- (1) Provide an opportunity for creative and flexible arrangement and mix of single family homes that is not permitted within the standard municipal zoning district classifications.
- (2) Better preserve sensitive environmental features, agricultural and farmlands, by avoiding development on these unique natural areas.
- (3) Promote development that respects the unique characteristics, natural quality and beauty, and rural characteristics of the site and the immediate vicinity.
- (4) Enable greater development plan review to ensure that the development preserves natural features, is properly integrated into its surroundings and is compatible with adjacent development.
- (5) Implement the housing and economic development goals of the City.
- (6) Promote economical and efficient use of land and reduce infrastructure costs through unified development.
- (7) Establish objective standards and criteria for plan review that ensures conformity to community standards.

(Ord. 43-2011. Passed 4-28-11.)

#### **1160.02 ESTABLISHMENT OF AN R-6 RESIDENTIAL OPEN SPACE PLANNED DEVELOPMENT DISTRICT.**

(a) Application. The purposes of the Residential Open Space Planned Development District are achieved by establishing review process that combines the request for a zoning amendment with the concurrent development plan review, and when applicable, the subdivision process. Therefore:

- (1) Each Residential Open Space Planned Development District shall be considered a separate and unique zoning district wherein a General Development Plan, including associated text, depicting the specific development standards and development commitments, is adopted simultaneously with the adoption of the Residential Open Space Planned Development District zoning map amendment.
- (2) The General Development Plan adopted at the time of rezoning to the Residential Open Space Planned Development District shall be prepared in accordance with the provisions and shall take precedence over any conflicting regulations contained in the Tallmadge Planning and Zoning Code.

(b) Ownership. The Residential Open Space Planned Development District shall be an integrated, unified development project and the entire project area shall be in single ownership or joint ownership and/or control at the time the application is made for the District designation so that all property owners are applicants. Any transfer of ownership for any portion of the land within the development resulting in ownership by two or more parties, after an application has been filed, shall not alter the applicability of the regulations contained herein. A General Development Plan approved in accordance with these regulations for a Residential Open Space Planned Development District shall be binding upon the owners, their successors and assigns.

(c) All zoning amendments to an R-6 Residential Open Space Planned Development District shall be designated on the Zoning Map as an R-6 ROSPDD.

(d) Detailed Final Development Plans shall be reviewed and acted upon by the Planning Commission according to Section 1160.12.

(e) A preliminary subdivision plat may be reviewed simultaneously with a General Development Plan. A final subdivision plat shall be reviewed simultaneously with a Final Development Plan, unless a final plat is not required for completion of the project. All subdivision plats shall be reviewed and approved by the Planning Commission according to Chapter 1109, Procedure for Subdivision Approval.

(Ord. 43-2011. Passed 4-28-11.)

#### **1160.03 MINIMUM PROJECT AREA.**

The gross area of a tract of land proposed for development under the Residential Open Space Planned Development District regulations shall be a minimum of thirty (30) contiguous acres that is not separated by an existing public street right-of-way.

(Ord. 43-2011. Passed 4-28-11.)

#### **1160.04 DWELLING TYPES AND PERMITTED LAND USES.**

The dwelling types that are permitted within an R-6 ROSPDD are:

- (a) Single-Family Residential Detached Dwellings.
- (b) Accessory Uses which shall include:
  - (1) Community buildings, recreational facilities, fences, signs, and etc.
  - (2) Any use, building or structure which is clearly incidental to the principally permitted use on the lot.
  - (3) Home occupations. (Ord. 43-2011. Passed 4-28-11.)
  - (4) Accumulative area for all accessory buildings shall not exceed 900 sq. ft. Accumulative area of all accessory buildings located within the rear yard shall not exceed 20% of the rear yard area. For computing the accumulative area, if a detached accessory building is connected to the principal building by a breezeway or other similar structure, the ground area of such breezeway shall be considered as a part of the accessory building and shall be included in the computation.

(Ord. 86-2011. Passed 11-10-11.)

#### **1160.05 DENSITY.**

An R-6 ROSPDD shall not exceed two (2) units per acre based on the gross area of the parcel rounded up to the next highest dwelling unit. The maximum density on any single acre shall not exceed six (6) units. The maximum density for any single acre is measured by superimposing an imaginary square template, approximately 209 feet by 209 feet, over any one-acre of the site. (Ord. 43-2011. Passed 4-28-11.)

#### **1160.06 OPEN SPACE REQUIREMENTS.**

A minimum of thirty (30%) percent of the gross area of the development shall be devoted to common open space and shall comply with the following:

- (a) Such open space must be aggregated areas and shall not include the following:
  - (1) Buildings, public rights-of-way, private streets, driveways, and parking areas;
  - (2) Land fragments between two or more buildings, and land fragments between buildings and parking areas, and any other land within fifteen (15) feet of all buildings, roads, driveways, and parking areas; and
  - (3) Required yards or setbacks between project boundaries and buildings or parking areas, unless the required setback is contiguous to, and part of, a larger area of open space, except that eighty-five (85) feet of the required setback from the existing collector or thoroughfare street right-of-way may be considered as common open space (see also Section 1160.07).
- (b) To the extent possible, the common open space areas shall be interconnected within the development and to adjacent parcels, and shall be easily accessible to residents of the Development. If the common open space contains pedestrian trails that are open to the public then such trails may be approved as a substitute for the street sidewalks required pursuant to Chapter 1113.
- (c) Common open space shall be designed and located to preserve significant natural features and historical elements to the extent possible. The following priorities should be considered when determining the land to be designated as common open space:
  - (1) Wetlands, floodplains, lakes and ponds, and other water resources. The development plan should avoid alteration of or construction within natural drainage ways, and shall utilize low impact storm water management techniques such as grassy swales to the extent possible. Wetlands that are required by the Army Corps of Engineers or the Ohio EPA to be retained shall be protected by:
    - A. A buffer area having a width not less than twenty (20) feet measured from the edge of the designated wetland. The area within this buffer shall not be disturbed and shall be retained in its natural state.
    - B. A minimum building and pavement setback of thirty-five (35) feet, measured from the edge of the designated wetland.
    - C. Riparian setbacks in compliance with Chapter 1190.
  - (2) Woodlands, orchards, prime farmlands, meadows, and other vegetation. The design and layout of the development shall conserve and incorporate these areas to the extent possible, especially those containing significant wildlife habitats.
  - (3) Scenic visual areas with respect to tree lines, unique vegetation, wildlife habitat, and other natural features. To the extent possible, structures shall be located to ensure that scenic views and vistas are unblocked or uninterrupted, particularly as seen from existing and proposed public thoroughfares.
  - (4) Historic structures or buildings. Buildings or structures with significant historic meaning or traditional meaning that pertains to the area's history, such as barns, mills, etc. shall be preserved to the extent possible.
- (d) When approved by the City, a portion of the planned open space may be used as detention/retention basins, provided they are designed, arranged and landscaped in a manner consistent with the requirements for open space areas.
- (e) The common open space established as part of a Residential Open Space Planned Development District shall be either:
  - (1) Retained by the owners of the Planned Development area only until such time as the Covenants and Restrictions specify that the open space becomes the responsibility of the homeowners association or until the land is accepted by the City

- (pursuant to subsection 3, below) or an easement is granted to a land conservancy pursuant to subsection 4, below;
- (2) Dedicated to a homeowners association or similar legal entity that shall have title to the land to be retained as common open space;
  - (3) Offered to the City for public open space. The City shall have the right to not accept any land area offered to the City. In the event of such refusal, the conditions of either 1 or 2 above, shall apply. Any land area that is accepted by the City for dedication as public open space shall also continue to be counted toward the requirement for common open space; or
  - (4) An easement is granted to a land conservancy or similar organization.
  - (f) The legal articles relating to the ownership, management, public easements if any, and maintenance of such common open space shall be reviewed and approved by the City's Law Director who shall indicate such approval prior to the final development plan being approved by the Planning Commission.
  - (g) Recreation Allowances. With the exception of extremely environmentally sensitive areas, passive recreation shall be permitted in common open space for the enjoyment of the residents of the proposed development and/or the public. Active recreation shall be limited to not more than ten (10%) percent of the common open space. Recreational facilities proposed to be constructed in such common open space shall be clearly shown on the development plan. Active recreation includes, but is not limited to, such facilities as: swimming pools, tennis courts, playgrounds, ball fields, and etc.

(Ord. 43-2011. Passed 4-28-11.)

**1160.07 DEVELOPMENT STANDARDS.**

(a) The following specific development standards shall be adhered to in the design and layout of any Residential Open Space Planned Development District:

| <b>Minimum Setbacks</b>  |         |
|--|---------|
| <b>1. Building</b>   |         |
| Existing collector or thoroughfare street right-of-way                                       | 100 ft. |
| Existing street right-of-way   | 35 ft.  |
| Internal street - public <sup>1</sup>  | 25 ft.  |
| Internal street - private that has more than 10 units with access to the street <sup>1</sup> | 25 ft.  |
| Internal street - private with ten (10) units or less  | 4       |
| Side/rear project boundary line  | 30 ft.  |
| <b>2. Parking<sup>2</sup></b>  |         |
| Existing street right-of-way   | 30 ft.  |
| Side/rear project boundary line  | 20 ft.  |
| <b>3. Required landscape buffer</b>  |         |
| Existing street right-of-way   | 30 ft.  |
| Side/rear project boundary line  | 20 ft.  |
| <b>Minimum Spacing Between Dwellings<sup>3</sup></b>   |         |
| 1. Main wall to main wall  | 60 ft.  |
| 2. Main wall to end wall   | 30 ft.  |
| 3. End wall to end wall  | 15 ft.  |

| <b>Minimum Size of Each Dwelling Unit</b>  | 1,500 sq. ft. <sup>5</sup> |
|--|----------------------------|
| <sup>1</sup> If the internal street is public, the setback is measured from the right-of-way; if it is private the setback is measured from the curb or edge of the street pavement.<br><sup>2</sup> Parking shall be provided in accordance with the requirements of Chapter 1187 which is two (2) spaces per dwelling unit provided that for each dwelling unit on a private street additional guest parking shall be provided as determined by the Planning Commission.<br><sup>3</sup> The following definitions shall apply to terms used in this Section:<br>(a) <u>Main Wall</u> : The outside wall(s) of a building that contains the primary windows of any living, family, or dining room. A dwelling will likely have two (2) main walls.<br>(b) <u>End Wall</u> : The outside walls of a building, other than a main wall, which may be blank or contain windows not considered to be primary windows.<br><sup>4</sup> Determined during the review of the development plan.<br><sup>5</sup> A minimum of 1,000 sq. ft. must be on the ground floor of the dwelling. |                            |

(b) Lot Requirements: Dwelling units are not required to be on lots, and sublots are not required to have frontage on a public street. However, all lots shall be of sufficient size and shape to accommodate dwelling units in compliance with the spacing requirements of this Section.

(c) Required Buffer: The buffer area shall be landscaped with an acceptably designed wall, fence, planting screen, or mound, or some combination thereof, as approved by the Planning and Zoning Commission.

(d) Utilities: Underground utilities, including telephone and electrical systems, are required within the limits of a Residential Open Space Planned Development District. Appurtenances to these systems that can be effectively screened may be exempted from this

requirement if the Planning and Zoning Commission finds that such exemption will not violate the intent or character of the proposed development.

(e) Additional Standards: Additional development requirements, whether standards or criteria, formulated to achieve the objectives of the District may be established at the time a Residential Open Space Planned Development District plan is reviewed. Any such development requirements adopted with such plan shall become binding land use requirements for the development. (Ord. 43-2011. Passed 4-28-11.)

#### **1160.08 STREET REQUIREMENTS.**

Each lot and building envelope within a Residential Open Space Planned Development District shall have sufficient access to ensure safe and efficient traffic flow and reasonable ingress and egress for emergency vehicles. To this end, the street requirements are as follows:

- (a) Public Streets. A street shall be required to be publicly dedicated when such street is a major street that connects two (2) existing public streets, is intended to provide a future continuing street system beyond the project boundaries, or is expected to accommodate pass-through traffic going to and from adjacent developments.
- (b) Private Streets. Streets that are not otherwise required to be public streets pursuant to subsection (a) above may be approved as private streets when the City determines that:
  - (1) The private street is not planned or expected to be extended to serve property outside the District.
  - (2) Adequate utility easements are provided to the satisfaction of the City.
  - (3) The design and layout of the private street provides adequate and safe access to the intended units.
  - (4) A private street with single access shall provide access to no more than twenty (20) dwelling units.
  - (5) A construction bond and maintenance bond acceptable to the City shall be posted for both public and private streets.
- (c) Pavement Width. Private streets may be constructed with narrower pavement widths than required for public streets provided such narrow pavement is approved by the Planning and Zoning Commission with the recommendation of the Director of Public Service.
- (d) Construction Standards. All elements of a private street that are to be provided in an R-6 ROSPDD shall be constructed in accordance with the construction standards set forth for public streets in the City's Subdivision Regulations. However, when the Planning and Zoning Commission, with the recommendation of the Director of Public Service, determines that certain elements of a public street do not or should not specifically apply to a private street due to the circumstances of a particular project or portion of a project, the Planning and Zoning Commission, may waive or permit a modification to the installation of any such element(s) to the extent deemed just and proper provided such relief may be granted without detriment to the public good. This provision also applies to waiving the requirements for curbs and storm sewers when the applicant demonstrates to the satisfaction of the Planning and Zoning Commission, with the recommendation of the Director of Public Service, that based on the topography of the site, open space, density and other environmental considerations, the proposed open natural drainage system will equally satisfy the drainage requirements. (Ord. 43-2011. Passed 4-28-11.)

#### **1160.09 HOMEOWNERS ASSOCIATIONS.**

Homeowners associations, or similar legal entities that, pursuant to Section 1160.06, are responsible for the maintenance and control of common areas including recreational facilities, common open space, private streets, and buffer areas, shall be established in such a manner that:

- (a) Provisions for the establishment of the association or similar entity is made before any lot in the development is sold or any building occupied;
- (b) The association or similar legal entity has clear legal authority to maintain, exercise control over, and insure such common areas and facilities;
- (c) The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas and facilities;
- (d) Membership in the Association shall be mandatory for all purchasers of lots or homes in the development. (Ord. 43-2011. Passed 4-28-11.)

#### **1160.10 PHASED DEVELOPMENT.**

If the development is to be implemented in phases, each phase shall have adequate provision for access, parking, storm water management, and other public improvements to serve the development. Each phase shall be provided with temporary or permanent transitional features, buffers, or protective areas in order to prevent any adverse impact on completed phases, future phases, and adjoining property. (Ord. 43-2011. Passed 4-28-11.)

#### **1160.11 ZONING AMENDMENT PROCEDURES AND APPROVAL CRITERIA.**

The Planning and Zoning Commission and City Council shall review and approve a general development plan for a proposed Residential Open Space Planned Development, concurrently with the proposed zoning amendment, according to the procedures set forth in this Section.

- (a) Submission of General Development Plan. The applicant shall submit a General Development Plan application to the Zoning Inspector. The application shall include documentation illustrating compliance with the standards and criteria set forth in this Chapter. The application and documentation shall include, but not necessarily be limited to:
  - (1) Identification of existing site characteristics, including a general depiction of:
    - A. Boundaries of the area proposed for development, dimensions and total acreage;
    - B. Contour lines at vertical intervals of not more than five (5) feet, highlighting ridges, rock outcroppings and other significant topographical features.
    - C. Location of wetlands (and potential wetlands); the floodway boundary and floodway elevation as delineated by the Federal Emergency Management Agency; rivers, streams, water courses, and their related river or stream banks, and required riparian setbacks; and ponds.
    - D. Locations of all wooded areas, tree lines, hedgerows, and specimen trees;
    - E. Delineation of existing drainage patterns on the property, existing wells and well sites;

- F. Description of significant existing vegetation by type of species, health, quality, etc.;
  - G. Existing buildings, structures and other significant man-made features on the site and within two hundred (200) feet of the project boundary; and
  - H. Description of all structures and areas of known or potential historical significance.
- (2) The General Development Plan, at an appropriate scale(s) that depicts:
- A. A summary of the proposed development including the total acreage, number of residential units, the general acreage and density for each sub-area and the boundaries and the acreage of the common open space to be conserved;
  - B. A preliminary, or prototypical, layout illustrating the character of each sub-area which demonstrates that the final design will comply with the regulations in this Chapter;
  - C. The location of the common open space and any proposed recreational facilities;
  - D. Natural features that will be conserved and any required buffer areas;
  - E. Natural features to be altered or impacted by the development and areas where new landscaping will be installed, etc.;
  - F. General location of all streets and drives; and
  - G. Preliminary landscaping and buffering.
- (3) An outline of the method/structure to perpetually preserve the required open space which indicates:
- A. The structure of the association;
  - B. Membership requirements;
  - C. Financial responsibilities; and
  - D. The relationship of the entity to public agencies having responsibilities related to the project.
- (4) A description of the project phasing including the phased inclusion of the open space and any improvements thereto.
- (b) Review For Completeness. Within five (5) business days of receiving the application, the Zoning Inspector shall review the application to determine that the application includes all the items required in Subsection (a) above. If the application is deemed complete and the application fee paid, the Zoning Inspector shall officially accept the application on that date.
- (c) Review of General Development Plan by Others. The City Zoning Inspector and/or the Planning and Zoning Commission may refer the application to other City officials, and/or private consultants for their review. All costs incurred for private consultants shall be paid by the applicant. Comments from the other City officials and/or private consultants shall be returned to the City Zoning Inspector not later than ten (10) days prior to the next scheduled meeting for consideration of the application on the agenda of the Planning and Zoning Commission or City Council, as appropriate.
- (d) Review and Approval by City. The Planning and Zoning Commission shall review the General Development Plan and any other material related to the plan and shall: approve the General Development Plan, approve the General Development Plan subject to specific conditions not included in the plan as submitted, or deny the General Development Plan, and forward its recommendations to Council. A denial of the General Development Plan also constitutes a recommendation to City Council to deny the zoning amendment.
- Council shall review the plan and the findings of the Planning and Zoning Commission. The general development plan shall only be deemed approved when the land is concurrently approved pursuant to the procedures in Chapter 1139 - Amendments.
- Failure of the City to act within one hundred fifty (150) days from the date the application first appears on the agenda of the Planning and Zoning Commission, or an extended period as may be agreed upon, may, at the election of the applicant, be deemed a denial of the General Development Plan.
- (e) Significance of Approved Plan. Approval of the General Development Plan concurrently with the rezoning of the land shall:
- (1) Establish the development framework for the project, including the general location of open space, development areas, densities, unit types, recreational facilities, and street alignments.
  - (2) Be the basis for the application to proceed with detailed planning, a preliminary plat, and engineering in reliance on the approved General Development Plan.
  - (3) Provide the basis for the Planning and Zoning Commission and City Council to consider and approve amendments to the General Development Plan when it is determined that the proposed amendment is equal to or better than the approved General Development Plan. An amendment to General Development Plan shall be reviewed pursuant to subsection (d), above.
  - (4) Authorize the applicant to apply for all other required regulatory approvals for the project or subsequent phases thereof. (Ord. 43-2011. Passed 4-28-11.)

#### **1160.12 PROCEDURES FOR FINAL DEVELOPMENT PLAN REVIEW.**

Prior to receiving a zoning permit, the Final Development Plan must be approved by the Planning and Zoning Commission according to the submission requirements and the procedures in this Section. Such Final Development Plan may be approved for a phase of the project, or the Final Development Plan may include the entire project.

- (a) Submission of Final Development Plan. In addition to the submission requirements of Subsection 1160.11, the Final Development Plan shall include:
- (1) A site plan depicting: all lot lines; the location and size of all dwelling units; the spacing of the dwelling units from each other, from the property lines and from the common open space and natural features.
  - (2) Prototypical elevations of the dwellings and a community building, if any.
  - (3) Standards for fences and accessory buildings.
  - (4) Proposed improvements to the common open space including, but not limited to, pathways, active recreation facilities, detention/retention basins.
  - (5) Prototypical construction standards for all roads (public and private), drives, and parking areas.
  - (6) Signs, including their size, height, location, and lighting.
  - (7) Landscape plans for:
    - A. Buffer areas between the dwellings within the project and adjacent properties;
    - B. The standard minimum landscaping that will be included around each dwelling;
    - C. The frontage along the streets, whether public or private;

D. The recreational facilities and common open spaces, if any.

Landscape plans shall include: the type of plant; the number and spacing of each plant; the size of the plant at the time of planting, within two (2) or three (3) years of planting, and at maturity. The landscape plans may also include mounds and/or fencing, as appropriate.

- (8) Declaration, Articles of Incorporation and Code of Regulations for all Homeowners' Associations and any other final covenants and restrictions and maintenance agreements pertaining to the ownership, use, and maintenance of all common areas, including restricted open space. The Law Director shall review the Declaration, Articles of Incorporation and Code of Regulations for a Homeowners' Association, and any other final covenants and restrictions and maintenance agreements to be imposed upon the District and shall provide a written opinion to the Planning and Zoning Commission documenting that the above demonstrate full compliance with the requirements of this Chapter.
- (9) A summary of any conditions imposed by other regulatory agencies.
- (10) Such other information as may be reasonably required by the Planning and Zoning Commission.
- (b) Review For Completeness. Within five (5) business days of receiving the application, the Zoning Inspector shall review the application to determine that the application includes all the items required in Subsection (a) above. If the application is deemed complete and the application fee paid, the Zoning Inspector shall officially accept the application on that date.
- (c) Review of Final Development Plan by Others. The City Zoning Inspector and/or the Planning and Zoning Commission may refer the application to other City officials, and/or private consultants for their review. All costs incurred for private consultants shall be paid by the applicant. Comments from the other City officials and/or private consultants shall be returned to the City Zoning Inspector not later than ten (10) days prior to the next scheduled meeting for consideration of the application on the agenda of the Planning and Zoning Commission.
- (d) Review and Approval by the Planning and Zoning Commission. The Planning and Zoning Commission shall review the Final Development Plan and any other material related to the plan and shall: approve the Final Development Plan, approve the Final Development Plan subject to specific conditions not included in the plan as submitted, or deny the Final Development Plan. Reasons for the denial of the Final Development Plan shall be clearly stated in the minutes and conveyed to the applicant in writing.
- (e) Time Limit for Review. Failure of the Planning and Zoning Commission to act within ninety (90) days from the date the application first appears on the agenda of the Planning and Zoning Commission, or an extended period as may be agreed upon, may, at the election of the applicant, be deemed a denial of the Final Development Plan. (Ord. 43-2011. Passed 4-28-11.)

#### **1160.13 DEVELOPMENT PLAN REVIEW CRITERIA.**

In addition to complying with the standards in Section 1141.03 and this Chapter, the Planning and Zoning Commission and Council shall only approve a General or Final Development Plan when it is determined to be in compliance with the following criteria:

- (a) Each part of the development can exist as an independent unit capable of creating an environment of sustained desirability and stability or that adequate assurance will be provided that such objective will be attained.
- (b) The existing and proposed streets and thoroughfares are suitable and adequate to carry anticipated traffic; the project will not generate traffic in such amounts as to overload the street network outside the District; and adequate traffic control measures (i.e. turning lanes and/or signals/signs) are provided at the intersection of the project's entry roads with the existing public street. Traffic control measures may include the reservation of land for future road widening adjacent to existing public rights-of-way.
- (c) The development will result in a harmonious grouping of buildings so that the area surrounding said development can be developed in a manner that is substantially compatible with the proposed development.
- (d) Maximum possible privacy for adjacent residential properties shall be provided through good design and use of proper landscaping according to the Chapter.
- (e) Adequate provisions are made in the final covenants and restrictions relating to the use and development of accessory buildings and structures (fences, pools, play equipment, etc.) associated with individual dwelling units; and
- (f) On-site circulation shall be designed to provide for adequate fire and police protection, and safe and efficient pedestrian and vehicular circulation.
- (g) The proposed development complies with all other applicable provisions of this Chapter. (Ord. 43-2011. Passed 4-28-11.)

#### **1160.14 TRANSFER OF DEVELOPMENT RIGHTS.**

An applicant may propose an R-6 Residential Open Space Planned Development District on two (2) or more non-contiguous properties, in the same ownership, as a single development.

All provisions of this Chapter shall continue to apply except that when considering a General Development Plan, the Planning and Zoning Commission and City Council may approve a plan that:

- (a) Has less than thirty (30%) percent open space on one of the parcels when the thirty 30% percent open space requirement is satisfied when considering all of the land in the application;
- (b) Has more than two (2) dwelling units per acre based on the gross land area of one (1) of the parcels, provided that the maximum of two (2) dwelling units per acre is satisfied when considering all the land in the application; and
- (c) When the City determines that such deviations further advance the purposes of this Chapter, than a development in strict compliance with the requirements of this Chapter. (Ord. 43-2011. Passed 4-28-11.)

#### **1160.15 WAIVERS.**

In the event Council, with recommendations from the Planning Commission, determines that certain standards set forth in this section do not or should not apply specifically to the circumstances of a particular project and an alternative method of achieving the objectives of the numerical standard is equal to or better than the strict application of the specified standard, the City may relax such standard to the extent deemed just and proper, provided that the granting of such relief shall be without detriment to the health and safety of the community and without detriment to or impairment of the intent of this Chapter.



**CHAPTER 1161**

**C-3 General Commercial District**

- 1161.01 Purpose.**
- 1161.02 Permitted principal uses.**
- 1161.03 Permitted accessory uses.**
- 1161.04 Conditionally permitted uses.**
- 1161.05 Minimum lot area.**
- 1161.06 Minimum lot width.**
- 1161.07 Minimum front yard setback.**
- 1161.08 Minimum rear yard setback.**
- 1161.09 Minimum side yard setback.**
- 1161.10 Maximum height regulations.**

**CROSS REFERENCES**

- Sign regulations - see P. & Z. Ch. 1183
- Nonconforming uses - see P. & Z. Ch. 1185
- Off-street parking and loading - see P. & Z. Ch. 1187
- Conditional uses - see P. & Z. Ch. 1189
- Supplemental regulations - see P. & Z. Ch. 1191

**1161.01 PURPOSE.**

The purpose of this district is to provide for a variety of retail, service and administrative establishments which are required to serve the entire community. This district is oriented to the multi-purpose shopper and it is intended that the design of this district will encourage groupings of establishments located on a unified site providing adequate parking facilities as well as an efficient and safe method of handling vehicular and pedestrian traffic.

(Ord. 89-1997. Passed 12-11-97.)

**1161.02 PERMITTED PRINCIPAL USES.**

- (a) Personal services.
  - (b) Restaurants.
  - (c) Fast food restaurants.
  - (d) Retail business provided that no outdoor display or storage occurs within the minimum front yard setback.
  - (e) Offices.
  - (f) Financial Institutions.
  - (g) Commercial recreational facilities, excluding amusement arcades.
  - (h) Off-street public parking lot and garage.
- (Ord. 121-2006. Passed 11-19-06.)

**1161.03 PERMITTED ACCESSORY USES.**

- (a) Signs.
  - (b) Any use, building or structure which is clearly incidental to the principally permitted use on the lot.
- (Ord. 89-1997. Passed 12-11-97.)

**1161.04 CONDITIONALLY PERMITTED USES.**

Conditionally permitted uses, subject to the specified Subsections in Chapter 1189, are as follows:

- (a) Religious places of worship; 105, 107, 113, 114, 121.
- (b) Public utilities, rights-of-way and pertinent structures; 112, 113, 121.
- (c) Non-commercial recreation; 103, 105, 106, 107, 113, 115, 121.
- (d) Clubs and lodges; 105, 107, 113, 115, 121.
- (e) Convalescent care facility; 103, 105, 107, 113, 121.
- (f) Hospitals; 103, 105, 107, 113, 121.
- (g) Child or adult day care facility; 103, 113, 115.
- (h) Automotive filling station; 107, 113, 115, 116, 121.
- (i) Building material stores with outside display not totally enclosed; 103, 107, 113, 115, 121.
- (j) Car wash; 103, 105, 107, 113, 116, 121.
- (k) Educational institutions; 103, 105, 107, 108, 113, 121.
- (l) Small contractors with no outside storage or vehicles in excess of 10,000 pounds gross vehicle weight; 107, 113, 115, 121.
- (m) Hotels and motels; 103, 105, 107, 113, 122.
- (n) Shopping Center; 103, 105, 107, 108, 113, 116, 121.
- (o) Bed and Breakfast; 107, 113, 115.
- (p) Residential dwelling unit attached to the main use; 115, 119.
- (q) Dining establishments serving alcoholic beverages; 103, 105(c), 107, 108, 113, 115, 131.
- (r) Any use with outdoor storage and/or display for sale of used merchandise; 103, 107, 113, 115, 121. (Ord. 68-2001. Passed 7-26-01.)
- (s) Any use similar in nature to a permitted use or conditionally permitted use in this District pursuant to Section 1189.06, Similar Permitted and Conditionally Permitted Uses.

(Ord. 46-2001. Passed 5-24-01.)

**1161.05 MINIMUM LOT AREA.**

No minimum lot area  
(Ord. 89-1997. Passed 12-11-97.)

**1161.06 MINIMUM LOT WIDTH.**

(a) 50 feet at street right-of-way and minimum front yard setback.  
(Ord. 89-1997. Passed 12-11-97.)

**1161.07 MINIMUM FRONT YARD SETBACK.**

(a) 50 feet from the proposed right-of-way per Tallmadge Thoroughfare Plan.  
(Ord. 89-1997. Passed 12-11-97.)

**1161.08 MINIMUM REAR YARD SETBACK.**

(a) 25 feet.  
(Ord. 89-1997. Passed 12-11-97.)

**1161.09 MINIMUM SIDE YARD SETBACK.**

(a) 10 feet.  
(b) 25 feet when abutting a residential district.  
(Ord. 89-1997. Passed 12-11-97.)

**1161.10 MAXIMUM HEIGHT REGULATIONS.**

(a) 35 feet.  
(Ord. 89-1997. Passed 12-11-97.)

**CHAPTER 1163**

**C-4 Automotive Oriented Commercial District**

**1163.01 Purpose.**

**1163.02 Permitted principal uses.**

**1163.03 Permitted accessory uses.**

**1163.04 Conditionally permitted uses.**

**1163.05 Minimum lot area.**

**1163.06 Minimum lot depth.**

**1163.07 Minimum front yard setback.**

**1163.08 Minimum rear yard setback.**

**1163.09 Minimum side yard setback.**

**1163.10 Maximum height regulations.**

**CROSS REFERENCES**

Sign regulations - see P. & Z. Ch. 1183  
Nonconforming uses - see P. & Z. Ch. 1185  
Off-street parking and loading - see P. & Z. Ch. 1187  
Conditional uses - see P. & Z. Ch. 1189  
Supplemental regulations - see P. & Z. Ch. 1191

**1163.01 PURPOSE.**

The purpose of this district is to provide for uses which are commercial in nature but which, due to their individual characteristics, would be better located outside the primary retail centers of the community. This district is designed to serve those persons concerned with making a single purpose stop, whether it be to purchase certain retail items, a personal service or to participate in some form of recreation, amusement or other facilities provided these districts should be located on a major thoroughfare as such districts are primarily aimed at serving the traveling public.

(Ord. 89-1997. Passed 12-11-97.)

**1163.02 PERMITTED PRINCIPAL USES.**

- (a) Golf courses.
- (b) Personal services.
- (c) Automotive filling stations.
- (d) Automotive service.
- (e) Restaurants.
- (f) Fast food restaurants.
- (g) Retail business with no display or storage within 10 ft of right-of-way.
- (h) Offices.

- (i) Financial Institutions.
  - (j) Drive-in establishments.
  - (k) Vehicles, equipment and tool sales or rental, with service and repair in enclosed buildings.
  - (l) Animal hospital or veterinarian clinic.
  - (m) Car wash.
  - (n) Commercial recreational facilities, excluding amusement arcades.
  - (o) Off-street public parking lot and garage.
  - (p) Shopping Center.
- (Ord. 121-2006. Passed 11-9-06.)

**1163.03 PERMITTED ACCESSORY USES.**

- (a) Signs.
  - (b) Any use, building or structure which is clearly incidental to the principally permitted use on the lot.
- (Ord. 89-1997. Passed 12-11-97.)

**1163.04 CONDITIONALLY PERMITTED USES.**

Conditionally permitted uses, subject to the specified Subsections in Chapter 1189, are as follows:

- (a) Public utilities, rights-of-way and pertinent structures; 112, 113, 121.
- (b) Government owned buildings and facilities; 113, 121.
- (c) Government owned parks and playgrounds; 103, 105, 106, 107, 113.
- (d) Non-commercial recreation; 103, 105, 106, 107, 113, 115, 121.
- (e) Clubs and lodges; 103, 105, 107, 113, 115, 121.
- (f) Convalescent care facility; 103, 105, 107, 113, 121.
- (g) Hospitals; 103, 105, 107, 113, 121.
- (h) Child or adult day care facility; 103, 113, 115.
- (i) Building material stores; 103, 107, 113, 115, 121.
- (j) Small contractors with no outdoor storage or vehicles in excess of 10,000 pounds gross vehicle weight; 107, 113, 115, 121.
- (k) Religious places of worship; 105, 107, 113, 114, 121.
- (l) Hotels and motels; 103, 105, 107, 113, 122.
- (m) Bed and Breakfast establishments; 107, 113, 115.
- (n) Residential dwelling unit attached to the main use; 115, 119.
- (o) Dining establishments serving alcoholic beverages; 103, 105(c), 107, 108, 113, 115, 131.
- (p) Any use with outdoor storage and/or display for sale of used merchandise; 103, 107, 113, 115, 121. (Ord. 68-2001. Passed 7-26-01.)
- (q) Any use similar in nature to a conditionally permitted use in this district pursuant to Section 1189.06, Similar Permitted and Conditionally Permitted Uses.  
(Ord. 46-2001. Passed 5-24-01.)

**1163.05 MINIMUM LOT AREA.**

No minimum lot area.  
(Ord. 89-1997. Passed 12-11-97.)

**1163.06 MINIMUM LOT WIDTH.**

(a) 50 feet at street right-of-way and minimum front yard setback.  
(Ord. 89-1997. Passed 12-11-97.)

**1163.07 MINIMUM FRONT YARD SETBACK.**

(a) 50 feet from the proposed right-of-way per Tallmadge Thoroughfare Plan.  
(Ord. 89-1997. Passed 12-11-97.)

**1163.08 MINIMUM REAR YARD SETBACK.**

(a) 25 feet.  
(Ord. 89-1997. Passed 12-11-97.)

**1163.09 MINIMUM SIDE YARD SETBACK.**

(a) 10 feet.

- (b) 25 feet when abutting a residential district.  
(Ord. 89-1997. Passed 12-11-97.)

**1163.10 MAXIMUM HEIGHT REGULATIONS.**

- (a) 35 feet.  
(Ord. 89-1997. Passed 12-11-97.)

**CHAPTER 1165**

**C-5 Highway Interchange Commercial District**

- 1165.01 Purpose.**
- 1165.02 Permitted principal uses.**
- 1165.03 Permitted accessory uses.**
- 1165.04 Conditionally permitted uses.**
- 1165.05 Minimum lot area.**
- 1165.06 Minimum lot width.**
- 1165.07 Minimum front yard setback.**
- 1165.08 Minimum rear yard setback.**
- 1165.09 Minimum side yard setback.**
- 1165.10 Maximum height regulations.**

**CROSS REFERENCES**

- Sign regulations - see P. & Z. Ch. 1183
- Nonconforming uses - see P. & Z. Ch. 1185
- Off-street parking and loading - see P. & Z. Ch. 1187
- Conditional uses - see P. & Z. Ch. 1189
- Supplemental regulations - see P. & Z. Ch. 1191

**1165.01 PURPOSE.**

The purpose of this district is to provide for uses which are compatible only with highway travel and the accommodation of all night and rest stop services. The purpose of the district is not the establishment or encouragement of local or regional shopping areas which would inhibit the use of interchange for its primary purpose of access between several highways or between highways and local roads. Where possible access roads with controlled egress and ingress to highways and local roads should be encouraged.  
(Ord. 89-1997. Passed 12-11-97.)

**1165.02 PERMITTED PRINCIPAL USES.**

- (a) Restaurants.
  - (b) Fast food restaurants.
  - (c) Retail business with no display or storage within 10 feet of right-of-way.
  - (d) Hotels or Motels.
  - (e) Automotive filling stations.
- (Ord. 89-1997. Passed 12-11-97.)

**1165.03 PERMITTED ACCESSORY USES.**

- (a) Signs.
  - (b) Car wash.
  - (c) Any use, building or structure which is clearly incidental to the principally permitted use on the lot.
- (Ord. 89-1997. Passed 12-11-97.)

**1165.04 CONDITIONALLY PERMITTED USES.**

Conditionally permitted uses, subject to the specified Subsections in Chapter 1189, are as follows:

- (a) Public utilities, rights-of-way and pertinent structures; 112, 113, 121, 122.
- (b) Government owned buildings and facilities; 113, 121, 122.
- (c) Government owned parks and playgrounds; 103, 105, 106, 107, 113, 122.
- (d) Non-commercial recreation; 103, 105, 106, 107, 113, 115, 121, 122.
- (e) Convalescent care facility; 103, 105, 107, 113, 121, 122.
- (f) Hospitals; 103, 105, 107, 113, 121, 122.
- (g) Residential dwelling unit attached to the main use; 115, 119
- (h) Dining establishments serving alcoholic beverages; 103, 105(c), 107, 108, 113, 115, 131.
- (i) Any use similar in nature to a permitted use in this district pursuant to Section 1189.06, Similar Permitted and Conditionally Permitted Uses.

(Ord. 46-2001. Passed 5-24-01.)

**1165.05 MINIMUM LOT AREA.**

- (a) No minimum lot area.
- (Ord. 89-1997. Passed 12-11-97.)

**1165.06 MINIMUM LOT WIDTH.**

- (a) 50 feet at street right-of-way and minimum front yard setback.  
(Ord. 89-1997. Passed 12-11-97.)

**1165.07 MINIMUM FRONT YARD SETBACK.**

- (a) 50 feet from the proposed right-of-way per Tallmadge Thoroughfare Plan.  
(Ord. 89-1997. Passed 12-11-97.)

**1165.08 MINIMUM REAR YARD SETBACK.**

- (a) 25 feet.
- (b) 50 feet when abutting a residential district.  
(Ord. 89-1997. Passed 12-11-97.)

**1165.09 MINIMUM SIDE YARD SETBACK.**

- (a) 10 feet.
- (b) 50 feet when abutting a residential district.  
(Ord. 89-1997. Passed 12-11-97.)

**1165.10 MAXIMUM HEIGHT REGULATIONS.**

- (a) 35 feet.  
(Ord. 89-1997. Passed 12-11-97.)

**CHAPTER 1167**

**I-1 Industrial District**

- 1167.01 Purpose.**
- 1167.02 Permitted principal uses.**
- 1167.03 Permitted accessory uses.**
- 1167.04 Conditionally permitted uses.**
- 1167.05 Minimum lot area.**
- 1167.06 Minimum lot width.**
- 1167.07 Minimum front yard setback.**
- 1167.08 Minimum rear yard setback.**
- 1167.09 Minimum side yard setback.**
- 1167.10 Maximum height regulations.**

**CROSS REFERENCES**

- Sign regulations - see P. & Z. Ch. 1183
- Nonconforming uses - see P. & Z. Ch. 1185
- Off-street parking and loading - see P. & Z. Ch. 1187
- Conditional uses - see P. & Z. Ch. 1189
- Supplemental regulations - see P. & Z. Ch. 1191

**1167.01 PURPOSE.**

The purpose of this district is to provide for and accommodate industrial, manufacturing, research and development and related uses in areas of the community having minimal impact upon the surrounding uses and their environment.  
(Ord. 89-1997. Passed 12-11-97.)

**1167.02 PERMITTED PRINCIPAL USES.**

- (a) Building materials stores.
- (b) Manufacturing.
- (c) Plant greenhouses.
- (d) Warehousing.
- (e) Wholesale establishment.
- (f) Laboratories and processing.
- (g) Research and development.
- (h) Boat Sales.
- (i) Repair Services.
- (j) Contractor services without materials and equipment storage yard.  
(Ord. 89-1997. Passed 12-11-97.)

**1167.03 PERMITTED ACCESSORY USES.**

- (a) Signs.
- (b) Child and adult day care facilities.
- (c) Retail sales.
- (d) Offices.
- (e) Any use, building or structure which is clearly incidental to the principally permitted use on the lot.  
(Ord. 89-1997. Passed 12-11-97.)

**1167.04 CONDITIONALLY PERMITTED USES.**

Conditionally permitted uses, subject to the specified Subsections in Chapter 1189, are as follows:

- (a) Public utilities, rights-of-way and pertinent structures 112, 113, 121.
- (b) Government owned buildings and facilities; 108, 113, 121.

- (c) Government owned parks and playgrounds; 103, 105, 106, 107, 113.
- (d) Contractors services with materials and equipment storage yard; 107, 113, 115, 121.
- (e) Fuel distribution station; 107, 108, 111, 113, 121.
- (f) Public storage garage or yards; 107, 113, 117, 121.
- (g) Motor freight garage; 107, 113, 121.
- (h) Technology Park; 105, 107, 108, 113, 121.
- (i) Non-commercial recreation; 103, 105, 106, 107, 113, 115, 121.
- (j) Crematory; 107, 113, 115, 121.
- (k) Any use similar in nature to a permitted use or a conditionally permitted use in this district pursuant to Section 1189.06, Similar Permitted and Conditionally Permitted Uses.
- (l) Sexually Oriented Business; 102, 107, 115, 123, 124, 125, 126, 127, 128, 129, 130.
- (m) Amusement arcades; 102, 107, 115, 123, 124, 125, 127, 129, 132.  
(Ord. 121-2006. Passed 12-14-06.)

**1167.05 MINIMUM LOT AREA.**

- (a) No minimum lot area.  
(Ord. 89-1997. Passed 12-11-97.)

**1167.06 MINIMUM LOT WIDTH.**

- (a) 50 feet.  
(Ord. 89-1997. Passed 12-11-97.)

**1167.07 MINIMUM FRONT YARD SETBACK.**

- (a) 50 feet from the proposed right-of-way per Tallmadge Thoroughfare Plan.  
(Ord. 89-1997. Passed 12-11-97.)

**1167.08 MINIMUM REAR YARD SETBACK.**

- (a) 25 feet.
- (b) 50 feet when abutting a residential district.  
(Ord. 89-1997. Passed 12-11-97.)v

**1167.09 MINIMUM SIDE YARD SETBACK.**

- (a) 10 feet.
- (b) 50 feet when abutting a residential district.  
(Ord. 89-1997. Passed 12-11-97.)

**1167.10 MAXIMUM HEIGHT REGULATIONS.**

- (a) 35 feet.  
(Ord. 89-1997. Passed 12-11-97.)

**CHAPTER 1175**

**Design Control Overlay District (DCOD)**

- 1175.01 Purpose.**
- 1175.02 Application of district regulations.**
- 1175.03 Development standards.**
- 1175.04 Design criteria for buildings that are not recognized heritage structures.**
- 1175.05 Criteria for site development.**
- 1175.06 Criteria for landscaping.**
- 1175.07 Sign criteria.**
- 1175.08 Review procedures.**
- 1175.09 Maintenance.**
- 1175.10 Emergency orders.**
- 1175.99 Penalty.**

**CROSS REFERENCES**

- Sign regulations - see P. & Z. Ch. 1183
- Nonconforming uses - see P. & Z. Ch. 1185
- Off-street parking and loading - see P. & Z. Ch. 1187
- Conditional uses - see P. & Z. Ch. 1189
- Supplemental regulations - see P. & Z. Ch. 1191

**1175.01 PURPOSE.**

The unique attributes of Tallmadge, a historically significant City, are personified by the carefully maintained architecture of our historical past. It is intended that Tallmadge's remaining examples of historical architecture be safeguarded and that new construction be designed as to blend in with the existing historical integrity of our community. The purpose of this District is to:

- (a) Maintain, safeguard, and enhance the architectural and historical presence of the Tallmadge Circle, the surrounding development, and the character along the street frontages radiating from Tallmadge Circle.
- (b) Review and approve all exterior construction proposed within this Design Control Overlay District (DCOD). The Heritage Commission shall accomplish these purposes by only approving exterior changes according to accepted and recognized architectural principles (for Recognized Heritage Structures as set-forth in Chapter 1177) and the compatible design criteria (for all other buildings and structures) as set forth in this Chapter.

- (c) Review site development along the frontages of the main streets around the City's Historic Tallmadge Circle and the frontage of the main roads leading to and from the Circle to retain the City's traditional, historical and early characteristics of the center of Tallmadge.

(Ord. 70-2012. Passed 9-13-12.)

#### **1175.02 APPLICATION OF DISTRICT REGULATIONS.**

(a) This Design Control Overlay District (DCOD) is an overlay Zoning District which is designated on the City of Tallmadge Zoning Map.

(b) The principal, conditional, and accessory uses permitted in the underlying Zoning District, and the development standards not otherwise modified by this Chapter, shall continue to be applicable.

(c) In addition to the requirements of the underlying zoning standards, not otherwise modified herein, no structure or site within the Design Control Overlay District, shall be modified, altered, removed, relocated, or otherwise changed except in compliance with the requirements of this Chapter and other applicable regulations in this Planning and Zoning Code provided that on any residentially zoned property that does not have frontage on Tallmadge Circle the following shall be exempt from the requirements of this Chapter and the areas of such exemption shall be governed by the underlying Zoning District regulations:

- (1) Accessory buildings that are 200 square feet or less, decks, fencing, and pools, if constructed of pre-approved materials and colors or are located behind the rear line of the principal building.
- (2) Re-roofing, re-painting, and re-siding of structures if all exterior colors and materials used conform to a pre-approved list promulgated by the Heritage Commission and which are on file in the Zoning Department provided that the Zoning Administrator determines, based on an application submitted to the City, that the applicant's intended improvements are exempt from the provisions of this Chapter.

(d) The Heritage Commission, along with the City Administration, may promulgate and approve the Design Control Overlay District Review Guidebook, and other similar material, intended to provide supplemental interpretation of the provisions of this Chapter and to further guide the evaluation of the appropriateness of projects coming before the Heritage Commission and the Planning and Zoning Commission. If a conflict exists between the Design Control Overlay District Review Guidebook and the Zoning Ordinance, the Zoning Ordinance shall govern.

(e) If there is a conflict between the provisions of this Chapter and the provisions of the underlying Zoning District, the provisions of this Chapter shall govern. Conversely, if this Chapter is silent with respect to a regulation, standard, or criteria, such regulation, standard, or criteria found elsewhere in this Planning and Zoning Code shall govern.

(f) For the purposes of this Chapter, a front lot line or the frontage of the property is the line or portion of the property adjacent to the right-of-way of Tallmadge Circle and the streets radiating from the Circle which are: North Ave.; Northeast Ave.; East Ave.; Southeast Ave.; South Ave.; Southwest Ave.; West Ave. and Northwest Ave.

(Ord. 70-2012. Passed 9-13-12.)

#### **1175.03 DEVELOPMENT STANDARDS.**

(a) The building setback from all street rights-of-way shall be a minimum of thirty (30) feet and a maximum of fifty (50) feet. Commercial buildings shall be encouraged to be set to the minimum front setback line, when possible.

(b) The off-street parking shall be setback:

- (1) From all street rights-of-way a minimum of thirty (30) feet with the area between the right-of-way line and the parking area landscaped pursuant to the standards and criteria in Section 1175.06 provided that in areas around Tallmadge Circle where publically owned lands are greater than the standard road right-of-way, the Planning and Zoning Commission may approve a lesser parking setback with the intention that the total landscaped area from the "standard width of the right-of-way" to the on-site parking shall be a minimum of thirty (30) feet.
- (2) From a side and rear lot line adjacent to a non-residential Zoning District a minimum of seven (7) feet.
- (3) From a side and rear lot line adjacent to a residential Zoning District a minimum of ten (10) feet.

(c) The minimum spacing of access points for commercial and industrial developments shall be one hundred (100) feet from the centerline to centerline along any street.

(Ord. 70-2012. Passed 9-13-12.)

#### **1175.04 DESIGN CRITERIA FOR BUILDINGS THAT ARE NOT RECOGNIZED HERITAGE STRUCTURES.**

New construction, expansion and renovation are to be designed to be compatible with the existing historical integrity of our community. The purpose of these criteria is to maintain, safeguard, and enhance the design and historical presence of the Tallmadge Circle and the surrounding development without requiring replication of the traditional and historic architecture.

- (a) All elevations of a building shall be subject to design review. A front façade shall be architecturally emphasized, and all sides of the shell shall be architecturally consistent with the front façade.
- (b) Larger buildings with an elevation more than seventy-five (75) feet long shall be designed with architectural variations along such elevation every fifty (50) feet or less which shall include at least one of the following: a change in roof lines; a setback change at least two (2) feet along the elevation, pilasters, columns, or similar features; etc.
- (c) Mechanical equipment and dumpsters shall be located so as not to be visible from any public ways or adjacent residential area. Where such limitations are not possible, the facilities shall be screened from public view with materials compatible with those used in the building.
- (d) The roof lines of the building should be pitched - gabled or hip - to replicate, to the extent practical, the historical roof lines in the area. Flat roofs are not acceptable as the main roof form for the building.
- (e) No more than sixty percent (60%) of the façade of the building facing the public right-of-way, or the front façade may be glass. Windows and doors should be designed to have a vertical orientation. Windows should be recessed and reflective glass is prohibited. Outdoor lighting of a building and parking area shall be directed so as not to shine on adjacent properties. Downcast lighting fixtures are encouraged. The design of lighting fixtures that are visible from the right-of-way are to be of a historical nature.
- (f) A single or multiple building project should provide a design that emphasizes activities from street level.

- (g) Acceptable materials for use shall include brick, wood, stone or stucco. Concrete blocks or slick pervasive materials such as plastic, neon or metallic are not acceptable. Back-lighted transparent or translucent awnings are not acceptable.
  - (h) Acceptable exterior colors for use on the building shall be muted. Color palette shall be designed to incorporate trim colors on windows, doors and gutters. Neon or fluorescent colors are not acceptable.
- (Ord. 70-2012. Passed 9-13-12.)

#### **1175.05 CRITERIA FOR SITE DEVELOPMENT.**

- (a) Parking areas shall be treated to minimize visual impact of parked cars as viewed from the public right-of-way and adjacent properties. Planting islands shall be provided that divide parking into smaller bays of parking. A minimum of five (5%) percent of parking areas shall be devoted to landscaped planting islands when the parking area is greater than forty (40) spaces.
- (b) Areas for outdoor use by building patrons and employees are encouraged nearby building entrances, sufficiently sized to accommodate expected usage and with adequate amenities, including benches or seat walls, trash containers and landscape plantings. These areas should be off-set from sidewalks and should also be set apart from parking areas by curbs, barriers, or landscaping as approved by the Planning and Zoning Commission.
- (c) To the extent practicable, off-street parking should be located entirely on the side or the rear of the building.
- (d) The entrance side(s) of buildings shall be setback a minimum of ten (10) feet from the edge of parking to provide for a sidewalk and landscape treatment between the building and adjacent parking/drives. The remaining sides of the building shall be a minimum of seven (7) feet between the building and the parking or drives.
- (e) Outdoor storage shall not be permitted for a new development unless otherwise approved by the Planning and Zoning Commission and such approved storage areas are fully screened as specified in Sub-Section "(h)", below.
- (f) Utility services shall be placed underground for all new services.
- (g) Overhead utilities shall be consolidated onto new or existing poles to minimize the quantity of utility poles in existing sidewalks.
- (h) Service entrances, loading zones, and dumpster locations shall be screened with an eight (8) feet high wall, fence, landscaping, or combination thereof, from adjacent properties and the public right-of-way and shall be located in the side or rear of the lot. When used, evergreen planting shall be a minimum of eight (8) feet in height at the time of planting. Fences or walls shall be of materials that are similar or compatible with the material(s) of the building and the District.
- (i) Areas for storage of snow shall be designed separately from landscaped areas in order to protect landscaping.
- (j) Minimize the number of vehicular turning movements and points of vehicular conflicts by reducing the number of access points to the minimum required for safe traffic flow. Points of ingress and egress shall be clearly defined and promote the safe movement of traffic. Provide clearly marked crosswalks at all driveway crossings with sidewalks.
- (k) Provide for the safe and functional movement of vehicles and pedestrians both on and off-site.
- (l) Give consideration to the location of existing access points adjacent to and directly across the street from the site. Curb cuts shall be shared by adjoining properties and unloading activities will not hinder vehicular ingress or egress.
- (m) All sites shall be designed so the plants and structures on the site do not interfere with the safe movement of motor vehicle traffic, bicycles or pedestrians.
- (n) Vehicular circulation between parcels is encouraged through coordination or joint parking systems to minimize curb cuts along the street.
- (o) Outdoor lighting of a building and parking area shall be directed to the surface being lighted so as not to shine on adjacent properties. Cut-off lighting and directional fixtures shall be employed throughout. The design of lighting fixtures that are visible from the right-of-way shall be similar to and complement the building and other site features. Energy efficiency in lighting is encouraged. Light levels shall be effective but not overly bright. Parking lot lighting shall not exceed one (1) foot candle on average; sidewalks and landscaped areas shall not exceed one-half (0.5) foot candle on average; and illumination at the property line shall not exceed one-half (0.5) foot candle. The use of sodium vapor and incandescent lamps are discouraged.

(Ord. 70-2012. Passed 9-13-12.)

#### **1175.06 CRITERIA FOR LANDSCAPING.**

- (a) The use of sustainable practices is encouraged throughout design of the site. Stormwater infiltration, the reduction in stormwater piping and water quality enhancements through the use of rain gardens, bioswales, porous paving and other green infrastructure are encouraged within parking areas and in landscaped areas. The City will reduce the stormwater management controls required for the site to the extent to which these techniques are employed.
- (b) Plant materials shall be chosen which are indigenous to the Tallmadge area, are compatible with site soils, drainage and rainfall amounts, and for their tolerance to site conditions and require minimal maintenance. The landscape design shall incorporate the entire site and consist of a palette of plants with year round appeal, which may include annuals, perennials, shrubs or trees. Plants shall be chosen for their mature effect without forced pruning to be maintained within the space provided.
- (c) Plants that are along or near the public right-of-way shall buffer the impact of parking and drives. A minimum of two rows of shrubs 24-inches in height at the time of planting and staggered along the rows shall be placed along the sidewalk at the right-of-way. Plants shall be compatible and complementary to other similar plantings within the District. Other shrubs and perennials within this location but on the side of the shrub rows facing away from the public right-of-way shall complement the landscape character of the site and reinforce the shrub rows buffering effect. These may be further reinforced with trees at logical and complementary locations.
- (d) Side and rear yard planting buffers shall be employed to screen parking and drives from adjacent properties. Plants shall be chosen to be complementary to the landscape character of the site and be informal in their arrangement. Plant groupings and drifts of plants are encouraged, including trees, shrubs and perennials.
- (e) Except as specifically noted elsewhere, plants shall be of the following sizes. Shrubs shall be a minimum of 18-inches in size. Perennials shall be #1 and #2 container size, depending on the varieties of plants chosen. Trees shall be a minimum of 2-1/2 inch caliper for shade trees and 8-10 feet in height for ornamental flowering trees and evergreen trees.
- (f) Parking lot islands shall be landscaped with a combination of trees, shrubs and perennials complementary with the landscape character of the site. In parking lots greater than forty (40) spaces a minimum of one tree for every ten (10) cars is required within the parking lot and along drives to shade paved areas.
- (g) Planting areas adjacent to buildings shall be generously landscaped with plants complementary to the landscape character of the



site and to the building architecture. Planting that enhances the arrival experience and calls attention to building entrances is encouraged.

(h) The required landscape plan shall address the functional aspect of landscaping such as drainage, erosion prevention, wind barriers, provisions for shade, energy conservation, sound absorption, dust abatement, reduction of glare and screening. The landscape plan shall describe in detail the proposed landscape improvements including the location of plants, their species, size and quantity. Site amenities such as light fixtures, benches and other street furnishings, paving types, screen walls and the like shall be specified.

(i) Parking areas and driveways shall be landscaped with shrubs, trees or tree groupings. A variation in species and heights of both trees and shrubs, which are effective in both summer and winter, is recommended.

(j) In locations where plants will be susceptible to injury by pedestrian or motor traffic, appropriate curbs, parking blocks or other devices shall be installed to separate these plants from sidewalks and/or parking areas.

(k) Dumpsters, loading docks, utility boxes and open areas where machinery or vehicles are stored or repaired, and other similar facilities, shall be screened from public ways and adjoining residential areas as specified in Section 1175.05 (h).

(Ord. 70-2012. Passed 9-13-12.)

#### **1175.07 SIGN CRITERIA.**

Signs in the Design Control Overlay District shall be permitted as provided in Chapter 1183 and further shall comply with the following design criteria:

- (a) The Heritage Commission shall review all permanent sign applications to insure that signs complement their location and are compatible in design and construction with the Design Control Overlay District purposes.
- (b) For existing structures, signs shall be designed, including but not limited to the lettering font style, to reasonably apply the design criteria of this District to the existing materials and style of the building.
- (c) Applicants must submit detailed information on height, width, thickness, materials, lettering and size, colors and location for each sign. A cross sectional view shall be included. Modifications to the size of signs need to be received and approved prior to review by the Heritage Commission.
- (d) Signs in the Design Control Overlay District shall be designed to complement the overall appearance of the building and site. All elements of a sign should create an overall cohesive design, reflect simplicity, avoid visual clutter and ensure legibility. All aspects of the design and construction and lettering should be done in a professional manner.
- (e) All ground signs and wall signs when mounted on a panel shall have a compatible frame or border.
- (f) The size and shape of wall signs shall be in proportion to the space the sign is to occupy.
- (g) Acceptable colors for use in signage shall be muted colors. Bright or fluorescent colors are not acceptable unless the portion of the sign with such bright or fluorescent colors constitutes less than thirty-five (35%) percent of the total sign area.
- (h) Lighting for signage in the Design Control Overlay District will preferably be from an external source such as a spotlight or other front-mounted light source. Reverse back lighting for building mounted letters may be permitted.

(Ord. 70-2012. Passed 9-13-12.)

#### **1175.08 REVIEW PROCEDURES.**

(a) The Planning and Zoning Commission shall be responsible for reviewing the development of the site, the location and size of free-standing signs, and the basic arrangement of exterior lighting and landscaping, including the number and type of plant, spacing, and size at planting consistent with the applicable requirements and procedures for Site Plan Review pursuant to Chapter 1141. The Planning and Zoning Commission may grant modifications to the specific standards/criteria in this Chapter when the Commission determines, based on unique characteristics of the site or development, that the purposes and intent of this Chapter are satisfied.

(b) The Heritage Commission shall review all changes to the exterior of buildings, the design of wall signs, free-standing signs and exterior light fixtures subject to the applicable review procedures in Chapter 1177 and shall issue a Certificate of Appropriateness for Recognized Heritage Structures, pursuant to the criteria in Section 1177.06 and a Certificate of Design Compliance for all other buildings in this Design Control Overlay District, pursuant to Section 1175.04.

(Ord. 70-2012. Passed 9-13-12.)

#### **1175.09 MAINTENANCE.**

(a) All structures subject to this Chapter shall be kept in a good state of maintenance and repair.

(b) Nothing in this Chapter shall be construed to prevent the ordinary maintenance or repair of any property within the Design Control Overlay District, provided such work involves no change in material, design, texture, color or exterior appearance; nor shall anything in this Chapter be construed to prevent any repair of structural deficiency which in the view of the Zoning Administrator is required for the public safety because of an unsafe, insecure or dangerous condition.

(Ord. 70-2012. Passed 9-13-12.)

#### **1175.10 EMERGENCY ORDERS.**

Notwithstanding other provisions of this Chapter, whenever the Zoning Administrator finds that an emergency exists in any structure subject to the regulations herein, which requires immediate action to protect the public's health and safety or that of the occupants thereof, the Zoning Administrator may issue an order certifying that such conditions exist and requiring actions as are necessary to meet such emergency. Subsequent to the correction of an emergency, the owner(s) of an affected property shall apply for and obtain, as applicable, a Certificate of Appropriateness or Certificate of Design Compliance and shall restore such property in conformance with all applicable requirements.

(Ord. 70-2012. Passed 9-13-12.)

#### **1175.99 PENALTY.**

(a) In addition to the prohibitions set forth in Section 1199.03(a) and related penalties in 1199.03(b), the following shall also constitute a violation of this Chapter:

- (1) Failure to comply. Whoever constructs, reconstructs, or alters any exterior architectural feature or demolishes a substantial part or all of any building within the DCOD without a Certificate of Appropriateness or Certificate of Design Compliance shall be fined not more than one hundred dollars (\$100.00). Each day of violation shall be considered

a separate offense. Whoever violates this section shall be required to restore and reconstruct such features in full detail. Restoration or reconstructions shall be in addition to any criminal penalty and not in lieu thereof.

- (2) Failure to perform. Whoever receives a Certificate of Appropriateness or Certificate of Design Compliance and constructs, reconstructs, or alters any exterior architectural feature other than in accordance with the requirements of the certificate, shall be fined not more than one hundred dollars (\$100.00). Each day of violation shall be considered a separate offense. Whoever violates this section shall be required to make all changes and additions needed to comply with the certificate. Changes and additions shall be in addition to any criminal penalty and not in lieu thereof.

(b) Notice of Violation shall be given as provided in Section 1199.02.

(Ord. 70-2012. Passed 9-13-12.)

## CHAPTER 1177

### Recognized Heritage Structures and Design Criteria

**1177.01 Purpose.**

**1177.02 Application of the regulations.**

**1177.03 Criteria for designating Recognized Heritage Structures (RHS).**

**1177.04 Procedures for designating a Recognized Heritage Structure.**

**1177.05 Criteria for certificates of appropriateness.**

**1177.06 Procedure for certificates of appropriateness.**

**1177.07 Procedures for removal as a Recognized Heritage Structure.**

**1177.08 Maintenance.**

**1177.09 Appeals.**

**1177.10 Emergency orders.**

**1177.99 Penalty.**

### CROSS REFERENCES

Sign regulations - see P. & Z. Ch. 1183

Nonconforming uses - see P. & Z. Ch. 1185

Off-street parking and loading - see P. & Z. Ch. 1187

Conditional uses - see P. & Z. Ch. 1189

Supplemental regulations - see P. & Z. Ch. 1191

### 1177.01 PURPOSE.

(a) The unique attributes of Tallmadge, a historically significant City, are personified by the carefully maintained architecture of our historical past, particularly the two architecturally significant structures that remain at the center of this unique community. It is intended that Tallmadge's remaining examples of historical architecture be safeguarded; that new construction be designed so as to replicate the existing historical integrity of the Recognized Heritage Structures. Therefore, the purposes of this Chapter are to:

- (1) Maintain, safeguard, and enhance the architectural and historical presence of these Recognized Heritage Structures throughout the City.
- (2) Assure that newer construction or renovation is designed to complement the historic characteristics within the Design Control Overlay District.

(b) Heritage Commission has been created to review and approve all exterior construction within the Design Control Overlay District and for all Recognized Heritage Structures throughout the City. These purposes shall be accomplished by reviewing proposals according to accepted and recognized architectural and design principles, as applicable, to assure all structures are created, demolished, moved, altered, or remodeled subject to the provisions of this Chapter and all other applicable ordinances of the City.

(Ord. 70-2012. Passed 9-13-12.)

### 1177.02 APPLICATION OF THE REGULATIONS.

(a) The standards, criteria, and procedures in this Chapter apply to those buildings designated as Recognized Heritage Structures (RHS) whether they are within or outside the Design Control Overlay District and all other structures within DCOD. The exterior of buildings and structures subject to the provisions of this Chapter shall only be modified, altered, demolished, relocated, or otherwise changed when in compliance with the provisions of this Chapter provided that on any residentially zoned property that does not have frontage on Tallmadge Circle the following shall be exempt from the requirements of this Chapter and the areas of such exemption shall be governed by the underlying Zoning District regulations:

- (1) Accessory buildings that are 200 square feet or less, decks, fencing, and pools, if constructed of pre-approved materials and colors or are located behind the rear line of the principal building.
- (2) Re-roofing, re-painting, and re-siding of structures in the Overlay District, if all exterior colors and materials used conform to a pre-approved list by the Heritage Commission and on file in the Zoning Department provided that the Zoning Administrator determines, based on an application submitted to the City, that the applicant's intended improvements are exempt from the provisions of this Chapter.

(b) The list of properties designated as Recognized Heritage Structures shall be maintained by the Clerk of Council and shall be made available for public review during normal business hours.

(c) The Heritage Commission along with the City Administration may promulgate and approve the Design Control Overlay District Review Guidebook, and other similar material, which is intended to provide supplemental interpretation of the provisions of this Chapter and Chapter 1175 and to further guide the evaluation of the appropriateness of those projects before the Heritage Commission. If a conflict exists between the Design Control Overlay District Review Guidebook and the Zoning Ordinance, the Zoning Ordinance shall govern.

(Ord. 70-2012. Passed 9-13-12.)

### 1177.03 CRITERIA FOR DESIGNATING RECOGNIZED HERITAGE STRUCTURES (RHS).

- (a) The Heritage Commission shall consider any century old structure for inclusion as a Recognized Heritage Structures (RHS).

(b) The Heritage Commission shall make a determination based on the percentage of the total structure that is 100 years old or older: whether the original structure has substantially the same exterior architectural appearance as when it was constructed: and how well later additions complement the original structure. The architecture of these buildings shall either adhere to Greek Revival or Federalist style architecture, commonly referred to locally as Western Reserve style architecture, which is the predominant historical architecture in the City, or reflect any other prevailing architectural style of the building.

The architecture shall complement the architectural styling of the historic church constructed in 1825, and/or the historic town hall constructed in 1857 in order for these proposed Recognized Heritage Structures to complement the City's unique history as an early community on the Connecticut Western Reserve. The structures must also meet one or more of the following criteria:

- (1) That it has character, interest, or value as part of the development, heritage, or cultural characteristics of the community, county, state, or country;
- (2) That its location was a site of a significant local, county, state, or national event;
- (3) That it is identified with a person who significantly contributed to the development of the community, county, state, or country;
- (4) That it embodies distinguishing characteristics of an architectural style valuable for the study of a period, type, method of construction, or use of materials;
- (5) That it is identified as the work of a master builder, designer, architect, or landscape architect whose individual work has influenced the development of the community, county, state, or country;
- (6) That it embodies elements of design, detailing, materials, or craftsmanship that render it architecturally significant;
- (7) That it embodies design elements that make it structurally or architecturally innovative;
- (8) That it has a unique location or singular physical characteristics that make it an established or familiar visual feature;
- (9) That it is a particularly fine or unique example of a utilitarian structure; or
- (10) That it is suitable and economically feasible for preservation or restoration.

(Ord. 70-2012. Passed 9-13-12.)

#### **1177.04 PROCEDURES FOR DESIGNATING A RECOGNIZED HERITAGE STRUCTURE.**

(a) The Heritage Commission may submit an application for a structure to be included as a Recognized Heritage Structure at any time. After such designation, if a structure is awarded any funding from an economic development grant program, the structure may not be removed within five (5) years from receipt of grant funds unless the total amount of the grant has been refunded.

(b) The Heritage Commission shall hold a public meeting for the purpose of considering structures for inclusion. The Heritage Commission shall notify by U.S. Postal Services each property owner whose structure is being considered for inclusion at least twenty (20) days prior to the public meeting.

(c) If more than one building or structure is on a property, the Heritage Commission shall determine the number of these structures that are included in the designation. Once the structure is recommended for inclusion as a RHS, there is a presumption of having historic, architectural, or cultural value to the citizens of Tallmadge.

(d) Not longer than 120 days after the conclusion of the public meeting, the Heritage Commission shall recommend a structure(s) for inclusion as Recognized Heritage Structures (RHS) to the City Council. Upon the receipt of such recommendation, the City Council shall hold a public hearing within 60 days for the purpose of consideration of the application. The City Council may approve, modify, or deny the application(s). In the case of modification or denial, the City Council shall state in the record of its meetings the reason(s) for such modification or denial.

(e) The owner(s) of any structure recommended for inclusion, or currently designated as a RHS may apply to be removed from the RHS designation by following these procedures:

- (1) Complete and submit a form for exclusion, available from the office of the Zoning Administrator.
- (2) Provide such items as a copy of the owner's title evidence; information about the structure; historical records or relevant statements of previous owners; written statements from qualified experts on the condition of the structure; color photographs of each elevation; and any other information to assist the Heritage Commission in their review of the exclusion request.

(Ord. 70-2012. Passed 9-13-12.)

#### **1177.05 CRITERIA FOR CERTIFICATES OF APPROPRIATENESS.**

The Heritage Commission shall review such application to determine the application's consistency with the criteria in Section 1177.04 in addition to the following:

- (a) The type of significant exterior architectural features of structures that should be protected;
- (b) The types of alterations that should be encouraged;
- (c) For additions to a structure, the size and height alterations that should be discouraged and encouraged;
- (d) The design of signs;
- (e) Other items that the Heritage Commission believes necessary for the review of alterations to structures on the RHS.

(Ord. 70-2012. Passed 9-13-12.)

#### **1177.06 PROCEDURE FOR CERTIFICATES OF APPROPRIATENESS.**

(a) The application for a Certificate of Appropriateness shall be made on such forms as prescribed by the Zoning Administrator not less than ten (10) days prior to the regularly scheduled meeting of the Heritage Commission and shall include drawings and supplemental specifications, indicating the building or structure exactly as it is proposed to be built. The number of copies required and the manner of submitting the application shall be determined by the Zoning Administrator. Such documents shall be accurately drawn to scale and dimensioned and shall specifically include the following:

- (1) A site plan showing the plot configuration and its perimeter dimensions, all structures on the site with locating dimensions, the location of all structures adjacent to the site within fifty (50) feet of the property line, and all vehicular drives, roads, related parking areas, main walks, walls, fences and major existing landscaping including trees of at least six inch caliper as measured six inches from top of ground in area affected by construction.
- (2) A vicinity map, a north arrow, the first floor level and existing and finished grade elevations at each corner of new construction and at each corner of the site shall be indicated.
- (3) Four (4) elevation drawings including front, rear and two side elevations together with additional views or cross sections, if

necessary, to indicate completely the exterior appearance of the structures. All elevations shall be drawn to the same scale, which shall be not less than one-quarter inch per foot. Each elevation shall show the accurate location of windows, doors, shutters, chimneys, porches and other architectural features, all materials and finishes, and an accurate finish grade line.

- (4) Additional details to show unusual construction.
- (5) Material and color samples of all major finish materials.
- (6) Drawings or photographs of existing structures that are to remain on the site where new structures are to be constructed. Where additions are to be constructed to existing structures, elevation drawings or photographs showing the location of the addition shall be included.
- (7) Fee as established by the City.
- (8) A written narrative describing the proposal and objectives and how the design reinforces the objectives and meets the criteria for the Certificate of Appropriateness.

(b) The Heritage Commission shall determine whether the proposed change will be appropriate to the preservation of the environmental, architectural, or historical character, as applicable, of the structure and its property or the Design Control Overlay District pursuant to the general and specific criteria. In determining the appropriateness of the change, the Heritage Commission may conduct public hearings on the project or solicit input from qualified City staff or consultants to the City. The criteria established under Section 1177.06, and any supplemental interpretative material and illustrations that have been promulgated, shall be used by the Heritage Commission to reach its decision.

(c) The Commission may approve the Certificate of Appropriateness, approve the Certificate with modification, deny the Certificate, or with the consent of the applicant continue the review to a future meeting date. In the case of denial, the Heritage Commission shall state its findings of fact and the reason(s) for the denial based upon the criteria established for review.

(d) The Summit County Building Department shall not issue a Building Permit or Demolition Permit for any structure until the required Certificate of Appropriateness has been approved by the Heritage Commission.

(e) The Heritage Commission shall consider all applications that have been properly submitted to it and approve, approve with conditions, or disapprove the application within forty-five (45) days of such item's first appearance on its agenda unless a time extension is mutually agreed to by the applicant and the Heritage Commission.

(f) A Certificate of Appropriateness shall be valid for twelve (12) months and shall automatically expire if, for any reason, construction has not begun within that period. All approved work must be completed within eighteen (18) months of issuance. One extension may be granted by the Heritage Commission for up to twelve (12) months. Application for extension must be made in writing to the Heritage Commission prior to expiration of the initial Certificate of Appropriateness. (Ord. 70-2012. Passed 9-13-12.)

#### **1177.07 PROCEDURES FOR REMOVAL AS A RECOGNIZED HERITAGE STRUCTURE.**

(a) Applications to the Heritage Commission for demolition and/or moving a structure must include the following information:

- (1) A written statement from the owner(s) indicating reasons for the demolition or moving;
- (2) An analysis of feasibility of rehabilitation, including the costs of rehabilitation, the market value of the property after rehabilitation, and, in case of income-producing properties, the income and expense likely to be produced by the property after rehabilitation.

(b) The Heritage Commission shall consider the exclusion and grant the request if it finds one or more of the following:

- (1) Within the Design Control Overlay District, the exclusion of the structure would not detract from the district based on the criteria set forth in this Chapter and Chapter 1175;
- (2) For stand-alone structures, with new information to be provided, it is determined that the structure does not comply with Section 1177.04;
- (3) It is determined by an independent architect who specializes in historic preservation that it is not feasible to preserve or restore the structure due to its deteriorated condition; or
- (4) In cases where an applicant applies to demolish a Recognized Heritage Structures (RHS), the Heritage Commission shall only grant the demolition when sufficient documentation has been submitted to the Heritage Commission by an independent architect specializing in historic preservation that deterioration has progressed to the point where it is not economically or structurally feasible to restore the structure. The cost of such documentation shall be borne by the applicant.

(c) Not longer than 120 days after the conclusion of the public meeting, the Heritage Commission shall recommend a structure(s) for inclusion as Recognized Heritage Structures (RHS) to the City Council. Upon the receipt of such recommendation, the City Council shall hold a public hearing within 60 days for the purpose of consideration of the application. The City Council may approve, modify or deny the application(s). In the case of modification or denial, the City Council shall state in the record of its meetings the reason(s) for modification or denial.

(d) No fee shall be required to apply for exclusion.  
(Ord. 70-2012. Passed 9-13-12.)

#### **1177.08 MAINTENANCE.**

Nothing in this Chapter shall be construed to prevent the ordinary maintenance or repair of any RHS or property provided such work involves no change in material, design, texture, color or exterior appearance; nor shall anything in this Chapter be construed to prevent any repair of structural deficiency, which in the view of the Zoning Administrator is required for the public safety because of an unsafe, insecure or dangerous condition.

(Ord. 70-2012. Passed 9-13-12.)

#### **1177.09 APPEALS.**

Any applicant aggrieved by any decision of the Heritage Commission may appeal the decision to the Board of Zoning Appeals unless otherwise specified in this Code. Such appeal shall be taken in accordance with the procedures set forth in Chapter 1137. A three-fourths (3/4) vote of the members of the Board of Zoning Appeals is required to overrule a decision of the Heritage Commission. In the event that the Board of Zoning Appeals does not affirm the decision of the Heritage Commission, the Board shall state its findings of fact and reasons in the minutes of its meeting and shall forward a copy of such minutes to the Heritage Commission.

(Ord. 70-2012. Passed 9-13-12.)

### **1177.10 EMERGENCY ORDERS.**

Notwithstanding other provisions of this Chapter, whenever the Zoning Administrator finds that an emergency exists in any structure subject to the regulations herein, which requires immediate action to protect the public's health and safety or that of the occupants thereof, the Zoning Administrator may issue an order certifying that such conditions exist and requiring actions as are necessary to meet such emergency. Subsequent to the correction of an emergency, the owner(s) of an affected property shall apply for and obtain, as applicable, a Certificate of Appropriateness or a Certificate of Design Compliance and shall restore such property in conformance with the applicable requirements and procedures.

(Ord. 70-2012. Passed 9-13-12.)

### **1177.99 PENALTY.**

(a) In addition to the prohibitions set forth in Section 1199.03(a) and related penalties in 1199.03(b), the following shall also constitute a violation of this Chapter:

- (1) Failure to comply. Whoever constructs, reconstructs, or alters any exterior architectural feature or demolishes a substantial part or all of any building within the District without a Certificate of Appropriateness or a Certificate of Design Compliance shall be fined not more than one hundred dollars (\$100.00). Each day of violation shall be considered a separate offense. Whoever violates this section shall be required to restore and reconstruct such features in full detail. Restoration or reconstructions shall be in addition to any criminal penalty and not in lieu thereof.
- (2) Failure to perform. Whoever receives a Certificate of Appropriateness or a Certificate of Design Compliance and constructs, reconstructs, or alters any exterior architectural feature other than in accordance with the requirements of the certificate, shall be fined not more than one hundred dollars (\$100.00). Each day of violation shall be considered a separate offense. Whoever violates this section shall be required to make all changes and additions needed to comply with the certificate. Changes and additions shall be in addition to any criminal penalty and not in lieu thereof. Notice of Violation shall be given as provided in Section 1199.02.

(Ord. 70-2012. Passed 9-13-12.)

## **TITLE SEVEN - Supplemental Zoning Regulations**

- Chap. 1181. Fences and Walls.
- Chap. 1183. Sign Regulations.
- Chap. 1185. Nonconforming Uses.
- Chap. 1187. Off-Street Parking and Loading Requirements.
- Chap. 1189. Conditional Uses.
- Chap. 1190. Riparian Setbacks.
- Chap. 1191. Supplemental Regulations.
- Chap. 1192. Management, Administration and Control of the Use of the City's Public Rights-of-Way.
- Chap. 1193. Wireless Communications Towers and Antennae.
- Chap. 1194. Flood Damage Reduction.
- Chap. 1195. Erosion and Sediment Control.
- Chap. 1196. Illicit Discharge and Illegal Connection Control.
- Chap. 1199. Violation, Remedies and Fees.

### **CHAPTER 1181**

#### **Fences and Walls**

- 1181.01 Purpose.**
- 1181.02 Scope.**
- 1181.03 Definitions.**
- 1181.04 Permitted fences and walls.**
- 1181.05 Prohibited materials.**
- 1181.06 General requirements.**
- 1181.07 Swimming pool fences and walls.**
- 1181.08 Zoning certificate, inspection, and fee.**
- 1181.09 Compliance required; conflicting provisions.**

#### **1181.01 PURPOSE.**

The purpose of this Chapter is to establish regulations controlling the use of fences and walls whereby the lot owner in any zoned district may have the privilege of privacy within his own lot with due consideration to the environment of his neighbor, the appearance of the community, and the safety of the public and the individuals.

(Ord. 61-2003. Passed 7-10-03.)

#### **1181.02 SCOPE.**

(a) This Chapter shall apply to all zoned districts as the same are defined by the Zoning Ordinance and official zoning map of the City.

(b) The fence and wall regulations herein shall not apply to any permanent fence or wall structure that complies with the current Building Code.

(Ord. 61-2003. Passed 7-10-03.)

#### **1181.03 DEFINITIONS.**

"Fence" or "Wall" means any structure composed of wood, steel, iron, masonry, stone, plastic, vinyl, or other material erected in such a manner and positioned as to enclose or partially enclose any property or any part of any property. Structures erected other than on lot lines or in close proximity to lot lines, which have solely an ornamental purpose and which do not in fact serve the purpose of enclosing

or partially enclosing property or of separating property from adjoining property, shall not be included within the definition of the word "fences" or "walls".

(Ord. 61-2003. Passed 7-10-03.)

#### **1181.04 PERMITTED FENCES AND WALLS.**

- (a) Fences or walls erected within the minimum front yard setback shall not exceed 3 ½ feet in height.
- (b) Fences or walls erected, other than within the minimum front yard setbacks, shall not exceed seven feet in height.
- (c) Corner lots where both sides of the lot face the street shall be treated as a front yard as relates to this ordinance.
- (d) Fence or wall height shall be determined by its height at natural grade.
- (e) Fences and walls shall not obstruct the clear site distances at intersections. Fences and walls shall not be constructed within a triangle of 25 feet from the intersection of the right-of-way lines.
- (f) Fences or walls constructed in Commercial and Industrial Districts shall be limited to 10 feet in height. Such fences or walls may contain barbed wire, provided that the barbs shall be located no less than seven feet above the ground or supporting area and shall not project over adjoining properties or right-of-way lines.
- (g) Snow fences may be erected between November 1 and March 31. All snow fences shall be removed by April 15. A zoning certificate shall not be required for snow fences.
- (h) Temporary fences or walls used during building construction or renovation shall not be subject to this Chapter. (Ord. 61-2003. Passed 7-10-03.)

#### **1181.05 PROHIBITED MATERIALS.**

Fences or walls shall not be made of or contain:

- (a) Chicken wire, except as used for animal-resistant garden enclosures.
- (b) Scrap materials.
- (c) Corrugated or sheet metal, except in Commercial or Industrial Districts.
- (d) Electrical current, except for horses and cattle in an agricultural use area and not within ten feet of the right-of-way.
- (e) Barbed wire, spikes, or other materials intended or likely to cause bodily harm, except as permitted in Commercial and Industrial Districts.

(Ord. 61-2003. Passed 7-10-03.)

#### **1181.06 GENERAL REQUIREMENTS.**

Notwithstanding anything contained herein to the contrary and in addition to any other requirement, the following provisions shall apply:

- (a) Fences or walls, which enclose athletic fields or courts, shall not exceed twelve feet in height.
- (b) A fence or wall of permitted height and design may be constructed along or upon common property lines and across any utility easement so as to allow maximum use of the area to be enclosed. Fences or walls placed on utility easements shall provide access to manholes, utility boxes, cleanouts, or other apparatus that may be used from time to time for maintenance of the utility. Fences or walls in drainage easements shall require prior approval of the City Engineer to allow for proper flow of water.
- (c) When a fence or wall obstructs access to a utility box, manhole, or other public apparatus for maintaining utilities, the owner shall be required to remove such fence or wall at his expense without remuneration from the City.
- (d) The height of the fence or wall shall not include the posts, except, however, the posts may not exceed the fence or wall height by more than six inches.
- (e) The entirety of each different material used in the construction of a fence or wall shall display its natural color or shall be painted or stained a single tint or shade of a single color.
- (f) Except when constructed of materials that have been designed or manufactured to remain untreated, all fences or walls shall periodically be treated with paint or chemicals so as to retard deterioration.
- (g) All fences and walls shall not contain in or upon themselves the following:
  - (1) Graffiti.
  - (2) Advertising.
  - (3) Lettering or number, except house numbers, which shall not exceed 3 inches in height.
- (h) Fences and walls shall be constructed in a workmanlike manner and shall be secured to the ground or supporting area in a substantial manner.
- (i) All fences or walls shall be maintained in good repair, structurally sound, and sanitary so as to not pose a threat to public health, safety, and welfare. If any fence or wall is found not to be in the state of good structural repair, it shall be removed, replaced, or repaired as required within 30 days notice.
- (j) Any existing fence or wall must be removed if the new fence or wall will be in the same place.
- (k) All fences or walls shall be constructed with the posts facing the fence or wall installer's structure, except if an existing fence or wall on the adjacent property is in place with the posts facing outward, the fence or wall installer has the option of constructing the fence or wall with the posts facing outward toward the adjacent fence or wall.

(Ord. 61-2003. Passed 7-10-03.)

#### **1181.07 SWIMMING POOL FENCES AND WALLS.**

Swimming pool fences and walls shall comply with the adopted Building Code under which it was constructed.

(Ord. 61-2003. Passed 7-10-03.)

#### **1181.08 ZONING CERTIFICATE, INSPECTION, AND FEE.**

- (a) Any fences or walls, which may be permitted, shall require the issuance of a zoning certificate issued by the Building and Zoning Department with fee as established pursuant to Section 1199.05.
- (b) Each property owner shall determine property lines and ascertain that the fence or wall thus constructed does not deviate from the plans as approved by the Building and Zoning Department issuing zoning certificates and does not encroach upon another lot or parcel of land. The Building and Zoning Department shall furnish such inspection as is deemed necessary to determine that the fence or wall is

constructed in accordance with plans submitted for the certificate, provided, however, that the issuance of such certificate by the Building and Zoning Department shall not be construed to mean the Building and Zoning Department has determined the fence or wall is not encroaching upon another lot, nor shall it relieve the property owner of the duties imposed herein. (Ord. 61-2003. Passed 7-10-03.)

### **1181.09 COMPLIANCE REQUIRED; CONFLICTING PROVISIONS.**

To the extent that the provisions of this Chapter are included in or similar to restrictive covenants contained in any deeds of record or recorded plats or approved subdivisions, or the contents of an approved zoning plan, then the contents of such restrictive covenants, approval of plats or subdivisions or plans shall control to the extent they are not in conflict with this Chapter. (Ord. 61-2003. Passed 7-10-03.)

## **CHAPTER 1183**

### **Sign Regulations**

#### **1183.01 Purpose.**

#### **1183.02 Application of sign regulations.**

#### **1183.03 Computations.**

#### **1183.04 Permanent signs in residential districts.**

#### **1183.05 Permanent signs in non-residential districts.**

#### **1183.06 Temporary signs.**

#### **1183.07 Prohibited signs.**

#### **1183.08 Design criteria, construction and maintenance.**

#### **1183.09 Regulations for nonconforming signs.**

#### **1183.10 Administrative procedures.**

### **CROSS REFERENCES**

Power to regulate advertising - see Ohio R.C. 715.65

Advertising on State and interstate highways - see Ohio R.C. Ch. 5516

Unauthorized signs and signals - see TRAF. 313.07

### **1183.01 PURPOSE.**

It is the intent of this Zoning Code to establish reasonable regulations governing the size, character, and location of signs within the City of Tallmadge, in a manner that contributes to the safety and general welfare of its citizens and the needs of businesses and other affected sectors of the community. Within this framework this Chapter is adopted to achieve the following objectives:

- (a) To minimize the possibility that sign size, location, or character will create hazards adversely affecting the public safety.
- (b) To establish sign limitations which allow reasonable capability for advertisement, but which prevent the escalation of sign competition to levels which are non-productive and create unnecessarily high entrepreneurial costs.
- (c) To provide sign regulations which are directly related to land use and therefore to the functional and economic need for signs of varying sizes, types and locations.
- (d) To create a more aesthetically pleasing urban environment, without unreasonably limiting the right of individuals to employ signs in the legitimate use of their property.
- (e) To eliminate abandoned, obsolete and deteriorated signs that impart a blighting influence on surrounding properties.

(Ord. 67-2012. Passed 9-13-12.)

### **1183.02 APPLICATION OF SIGN REGULATIONS.**

(a) The regulations contained in this Chapter shall apply to signs outside of the public right-of-way, except when specifically stated otherwise.

(b) A sign may only be erected, established, painted, created, or maintained in conformance with the standards, procedures, exemptions of this Chapter and other applicable City regulations.

(c) The following signs and displays are exempt from the regulations of this Chapter:

- (1) Any sign displaying a public notice or warning required by a valid and applicable federal, state, or local law, ordinance, or regulation.
- (2) An historic Building Marker not exceeding four (4) square feet in area.
- (3) Flags of the United States, the state, foreign nations having diplomatic relations with the United States, and any other flag adopted or sanctioned by an elected legislative body of competent jurisdiction. These flags must be flown in accordance with protocol established by the Congress of the United States for the Stars and Stripes. Any flag not meeting these conditions shall be considered a sign and shall be subject to regulations as such.
- (4) Works of art that do not include a commercial message.
- (5) A decorative display of religious and/or other holiday lights and decorations containing no commercial message when displayed during the appropriate time of the year.
- (6) Any traffic control sign, such as "STOP" or "YIELD," located on private property that meets applicable governmental standards pertaining to such signs and does not display a commercial message.

(Ord. 67-2012. Passed 9-13-12.)

### **1183.03 COMPUTATIONS.**

The following are the basic measurement standards to determine sign area, sign height, window area, and building frontages:

(a) Determining Sign Area or Dimension. Sign area shall include the face of all the display areas of the sign, excluding the frame and structural support. Architectural features are not considered signs and are exempt from these regulations.

- (1) For a sign that is framed, outlined, painted or otherwise prepared and intended to provide a background for a sign display, the area or dimensions shall include the display portion of the sign and shall not include the area of any structural frames or structural supports.
- (2) For a sign comprised of individual letters, figures, emblems, logos or elements on a wall, or an irregularly shaped freestanding

sign, the area of the sign shall encompass a regular, or a combination of not more than three (3) regular, geometric shape(s) which form or approximate the perimeter of all the elements in the display. When separate elements are organized to form a single sign, but the elements are separated by open space, the area shall be calculated by determining the geometric form, or combination of forms, which comprise the entire display area, including the space between the elements. Up to five (5) percent of the permitted sign area may be considered minor protrusions and extend outside the maximum limitation of three (3) regular geometric shapes, and are, therefore, exempted from being included as part of the sign area.

- (3) For freestanding signs, the area for a sign with more than one face shall be determined as follows:
    - A. When two identical sign faces are placed back to back so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure, are joined, are parallel or are within thirty (30) degrees of being parallel to each other and are at no point separated by a distance that exceeds three (3) feet, the sign area shall be computed by the measurement of one of the faces.
    - B. For any sign that has two (2) display faces that do not comply with the provision in above subsection A., or has more than two (2) display surfaces, then each surface shall be included when determining the area of the sign.
  - (4) In determining the area of freestanding signs, the structural frames and supports shall be exempted from being considered as part of the maximum permitted sign area and such exemptions shall also include:
    - A. The portion of a solid sign base, up to a maximum height of two (2) feet that is anticipated to be substantially screened by landscaping at the time of installation;
    - B. Additional base area, when such areas are determined to be:
      - 1. Constructed and designed with materials which are similar to, or compatible with, the architecture of the building or other site features; and,
      - 2. Not intended or designed to include messages and excludes colors, trademarks, or any other decorative design features that are primarily intended to attract attention, but rather are unobtrusive and compatible with the architecture of the building or other site features.
  - (b) Determining Sign Height. The height of a sign shall be measured from the base of the sign or supportive structure at its point of attachment to the ground to the top most elements of the sign. A freestanding sign on a man-made base, including a graded earth mound, shall be measured from the grade of the nearest street, drive or parking area, whichever is the highest grade reference.
  - (c) Determining Building Frontages and the Building Unit.
    - (1) The length of the building wall that faces the principal street or the length of the wall that contains the main entrance to the uses therein shall be considered the primary building frontage. The building frontage shall be measured along the length of the front wall between the exterior faces of the exterior side walls.
    - (2) A site/building will be considered to have secondary frontage when any of the following site/building characteristics are present:
      - A. The subject site is a corner lot;
      - B. The primary parking area is not located adjacent to a public street; and,
      - C. The building or unit has walls with ingress and egress that do not face the public street.
    - (3) When a site has both primary and secondary frontages, the property owner shall determine which wall shall be the primary building frontage and which wall(s) shall be the secondary building frontage. Only one outside wall of any business shall be considered its primary frontage.
    - (4) For signs in commercial and industrial districts, in no case shall a building elevation abutting and facing a residential district be considered a secondary frontage and signs shall not be permitted on any such secondary building frontage.
    - (5) For multi-tenant buildings, the portion of a building that is owned or leased by a single tenant shall be considered a building unit. The building frontage for a building unit shall be measured from the centerline of the party walls defining the building unit.
    - (6) In the case of an irregular wall surface, a straight line extended along such wall surface shall be used to measure the length.
  - (d) Determining Window Area. The window area of a building shall be the total glass area of windows on the ground floor of the building frontage, provided that for the purpose of these regulations, the height of windows on the ground floor shall be that portion of window(s) within fifteen (15) feet of grade.
  - (e) Determining Sign Setbacks. The required setbacks for any freestanding sign shall apply to all elements of the sign, including its frame and base.
- (Ord. 67-2012. Passed 9-13-12.)

**1183.04 PERMANENT SIGNS IN RESIDENTIAL DISTRICTS.**

(a) Sign Standards. Permanent signs for all residential uses and for nonresidential uses in residential districts shall be limited in number, area, height and setback based on the type of use, as set forth in Schedule 1183.04(a).

**Schedule 1183.04(a)**

**Permanent Signs in Residential Districts**

| Type  | Maximum Number Permitted | Maximum Area Per Sign | Regulations for Freestanding Signs |                                   |   |
|---|--------------------------|-----------------------|------------------------------------|-----------------------------------|---|
|   |                          |                       | Maximum Height                     | Minimum Setback from Right of Way | Minimum setback from abutting property line |
| <b>(a) Signs for Single-Family Detached, Single-Family Attached, and Two-Family</b> |                          |                       |                                    |                                   |   |
| (1) Wall and Freestanding signs combined  | 2/lot                    | 2 sq. ft.             | 6 ft.                              | 0 <sup>(1)</sup>                  | --  |



|  |   |   |       |  |        |
|--|---|---|-------|--|--------|
| (2) Freestanding sign for residential development identification   | See subsection 1183.04 (b)(2)                   | 36 sq. ft.  | 8 ft. | Equal to height of sign                  | --     |
| (3) Signs related to the sale of produce that is grown on the premise  | 1/lot   | 9 sq. ft.   | 8 ft. | Equal to height of sign                  |        |
| <b>(b) 1183.04 Multi-Family Buildings:</b>   |   |   |       |  |        |
| (1) Entrance and exit signs  | 2 per driveway (1 in, 1 out)                    | 3 sq. ft.   | 3 ft. | Not less than 2 ft. nor more than 10 ft. | --     |
| (2) Freestanding sign  | 1/development entrance                          | 36 sq. ft.  | 8 ft. | Equal to height of sign                  | 30 ft. |
| (3) Entry Sign (either on a building wall or freestanding adjacent to the entrance)                                | 1 per each public entrance                      | 4 sq. ft.   | --    | --                                       | --     |
| (4) Wall Sign  | 2/complex                                       | 1.0 sq. ft. per lineal ft. of building wall on which the sign is located up to 100 sq. ft. per sign | --    | --                                       | --     |
| <b>(c) Nonresidential Uses/Conditional Uses</b>  |   |   |       |  |        |
| (1) Entrance and exit signs  | 2 per driveway (1 in, 1 out)                    | 3 sq. ft.   | 3 ft. | Not less than 2 ft. nor more than 10 ft. | --     |
| (2) Freestanding sign  | 1   | 36 sq. ft.  | 8 ft. | Equal to the height of the sign          | 30 ft. |
| (3) Entry sign (either on a building or freestanding adjacent to the building)                                     | 1/each public entrance                          | 4 sq. ft.   | --    | --                                       | --     |
| (4) Wall Sign  | 1/building                                      | 1 sq. ft. per lineal ft. of building frontage   | --    | --                                       | --     |
| <b>(d) Instructional Signs:</b>  | <b>Permitted pursuant to Section 1183.05(f)</b> |   |       |  |        |
| <u>Notes for Schedule 1183.04(a):</u>  |   |   |       |  |        |
| (1) But no closer than ten (10) feet from the edge of pavement of the travel lane of the public or private street. |   |   |       |  |        |

**(b) Supplemental Regulations for Permanent Freestanding Signs.**

- (1) Freestanding signs shall be erected in landscaped beds and not on sidewalks, drives, or in parking lots. Neither the landscaping nor the freestanding sign shall obstruct the view of vehicles entering or exiting the property.
- (2) For residential developments, the freestanding sign shall have a maximum of two sign faces per entrance and be either a double-faced freestanding sign or two (2) single-sided sign faces attached to walls or entry features located one on each side of the street entrance.
- (3) For nonresidential uses, changeable copy shall be limited to a maximum of fifty (50) percent of the permitted freestanding sign area or eighteen (18) square feet, whichever is less. Changeable copy may be either computer driven or manually changed.

(Ord. 67-2012. Passed 9-13-12.)

**1183.05 PERMANENT SIGNS IN NONRESIDENTIAL DISTRICTS.**

Signs in nonresidential districts shall conform to the standards set forth in this Section, except for residential uses, which shall comply with the standards set forth in Section 1183.04.

- (a) Maximum Number and Area of Permanent Signs Attached to Buildings. Permanent signs attached to buildings shall conform to the maximum number and area limitations set forth in Schedule 1183.05(a).

**Schedule 1183.05(a)  
Permanent Signs Attached to Buildings**

| Type                                | Maximum Number Permitted                 | Maximum Area  |                            |              |
|-------------------------------------|--|---------------|----------------------------|--------------|
|                                     |  | DCOD District | C-3, C-4 and C-5 Districts | I-1 District |
| (a) Instructional signs             | Permitted pursuant to Section 1183.05(f) |               |                            |              |
| (b) Entry signs                     | 1/address                                | 4 sq. ft.     | 4 sq. ft.                  | 4 sq. ft.    |
| (c) Projecting signs <sup>(1)</sup> | 1/ground floor occupant frontage         | 6 sq. ft.     | 8 sq. ft.                  | --           |

|  |   |   |   |   |
|--|---|---|---|---|
| (d) Building signs, <sup>(2)</sup><br>excluding projecting signs | In compliance with maximum permitted area | 1 sq. ft. per lineal ft. of building frontage provided a minimum of 18 sq. ft. is permitted | 2 sq. ft. per lineal ft. of building frontage | 2 sq. ft. per lineal ft. of building frontage |
| (e) Window signs <sup>(3)</sup>                                  | In compliance with maximum permitted area | 35% of window area (4)  | 35% of window area (4)                        | 35% of window area (4)                        |

Notes to Schedule 1183.05(a)

- (1) As further regulated by subsection 1183.05 (b)(1)  
(2) And as otherwise permitted by Section 1183.05 (b)(2) and/or (3)  
(3) A maximum of two (2) sq. ft. of window signs may be illuminated  
(4) This allowance applies to the combined area coverage for both permanent and temporary window signs (See also Section 1183.06 (b)(1).

(b) Supplemental Regulations for Permanent Signs.

(1) Projecting Signs shall comply with the following:

- A. Projecting signs shall be limited to occupants that have a minimum of twenty (20) feet of building frontage.  
B. All projecting signs shall have a maximum height of fourteen (14) feet and a minimum clearance of eight (8) feet from the ground to the bottom of the sign, except when the projecting sign is located above a landscaped area or other area that does not permit pedestrian traffic beneath the sign.  
C. A projecting sign shall not extend more than four (4) feet from the face of the building.

(2) Sign Bonuses for Buildings with Large Building Setbacks. In the Commercial and Industrial Districts, the maximum allowable area for a building sign, excluding projecting signs, may be increased by 25% for each fifty (50) feet or fraction thereof of building setback of the principal building more than 100 feet from the principal street on which the building is located and the building is visible from the street, provided that in no case shall any sign exceed 200% of the allowable area in Schedule 1183.05.

(3) Sign bonuses for Corner Lots and Side and Rear Entrances. The maximum allowable area for building signs shall be increased beyond the allowable area set forth in Schedule 1183.05 in compliance with the following:

- A. The additional sign area for each secondary building frontage shall be fifty percent (50%) of the sign area permitted for the primary frontage and the total permissible sign area may be redistributed on the primary and secondary frontages provided that the sign area permitted on any eligible frontage shall not exceed one (1) square foot of sign area for each lineal foot of frontage in the Design Control Overlay District and two (2) square feet of signage per lineal foot of building frontage in all other non-residential districts.  
B. Notwithstanding the above, signs shall only be installed on a maximum of three (3) building elevations.

(c) Permanent Freestanding Signs. Permanent freestanding signs shall comply with the maximum number, area, and height limitations and minimum setbacks set forth in Schedule 1183.05(c).

**Schedule 1183.05(c)  
Permanent Freestanding Signs**

|                                | Maximum Number                           | Maximum Area              | Maximum Height | Minimum Setback                          |                       |
|--------------------------------|--|---------------------------|----------------|--|-----------------------|
|                                |  |                           |                | from ROW                                 | from Side Lot Line    |
| (a) Freestanding Signs         |  |                           |                |  |                       |
| DCOD (for nonresidential uses) | 1/zoning lot                             | 36 sq. ft.                | 8 ft.          | 10 ft.                                   | 15 ft.                |
| Retail Districts               | 1/zoning lot <sup>(1)</sup>              | 48 sq. ft. <sup>(1)</sup> | 12 ft.         | 10 ft.                                   | 15 ft. <sup>(2)</sup> |
| Industrial District            | 1/zoning lot                             | 48 sq. ft.                | 8 ft.          | 10 ft.                                   | 15 ft. <sup>(2)</sup> |
| (b) Entrance/Exit Signs        | 2 per driveway (1 in, 1 out)             | 3 sq.ft.                  | 3 ft.          | Not less than 2 ft. nor more than 10 ft. | --                    |
| (c) Instructional Signs        | Permitted pursuant to Section 1183.05(f) |                           |                |  |                       |

Notes to Schedule 1183.05(c)

- (1) See also Section 1183.05(d)  
(2) Minimum setback from a property zoned R-1, R-2, R-3 and R-4 shall be 25 feet

(d) Supplemental Regulations for Permanent Freestanding Signs.

(1) Additional Freestanding Signs for Large/Corner Lots. The number of freestanding signs on large or corner lots may be increased according to the following:

- A. One (1) additional sign for each one-hundred fifty (150) ft. of frontage greater than one-hundred fifty (150) lineal feet of frontage shall be permitted provided that the area of each additional freestanding sign shall comply with Schedule 1183.05 (c); and  
B. On a corner lot two (2) permitted freestanding signs may be aggregated into a single sign at the intersection of two streets. On a lot greater than 150 feet of frontage, the permissible sign area may be aggregated into fewer signs. However, the maximum area of any freestanding sign face shall not exceed 150 percent of the maximum area permitted for a single sign.

(2) Minimum Separation of Freestanding Sign. Freestanding signs on the same lot shall be separated by a minimum of 150 feet, as measured along the street right-of-way line. For corner lots, both sides of the intersection shall be used in

measuring spacing.

- (3) Multi-Occupant Facilities. When a freestanding sign (or signs) is permitted on a site that has more than one occupant, it is the property owner's responsibility to determine if the permitted sign area shall be devoted to identification of the building(s), the anchor occupant, all occupants, or some combination thereof.
  - (4) Changeable Copy. Changeable copy shall be limited to a maximum of fifty (50) percent of the permitted freestanding sign area or eighteen (18) square feet, whichever is less. Changeable copy may be either computer driven or manually changed.
  - (e) Additional Signs for Commercial Properties with Frontage Abutting I-76. In addition to the signs otherwise permitted in this Chapter, one (1) additional wall sign and one (1) additional freestanding sign shall be permitted for lots with property line(s) abutting Interstate Highway (I-76). The additional signs shall comply with the area requirements for a primary frontage as set forth in Schedule 1183.05(a) and the area and height requirements for a free standing sign in Schedule 1183.05(c).
  - (f) Instructional Signs.
    - (1) An instructional sign is a sign clearly incidental to the use of the property and intended to instruct employees, customers, or users, as determined by the Zoning Administrator, in matters of public safety, interest, and welfare and such signs shall not be included in the permitted sum of the sign areas regulated by this Chapter, provided such sign is not larger than necessary to serve the intended instructional purpose, and such sign is not in a location, nor includes design characteristics, that constitute or serve the purposes of publically advertising the use(s) on the property. Instructional signs may include, but are not limited to: ATM's, drive-thru's, parking and circulation instructions, hours of operation, credit card or other payment offerings or requirements, safety instructions, etc.
    - (2) If the Zoning Administrator determines that the proposed sign(s) does not serve instructional purposes, it shall be considered a freestanding or wall sign, as applicable, and subject to the pertinent regulations in this Chapter.
- (Ord. 67-2012. Passed 9-13-12.)

#### **1183.06 TEMPORARY SIGNS.**

- (a) Temporary Signs in Residential Districts. Temporary signs are permitted in Residential Districts subject to the following provisions:
  - (1) Each residential unit and each non-residential use shall be permitted to erect two (2) temporary signs either in a window or as a freestanding sign in the front yard. The sign face area of such temporary signs shall not exceed six (6) square feet and the maximum height shall not be greater than five (5) ft. Such signs shall not advertise a home occupation and shall not include any commercial messages for products, services, or activities that are not taking place on the property. Temporary freestanding signs shall not be located in the public right of way and shall be at least fifteen (15) feet from a side lot line.
  - (2) Temporary Signs for Non-residential Uses. In addition to the above temporary signs:
    - A. Special Event Signs. One temporary freestanding sign or one banner not exceeding thirty-two (32) sq. ft., either attached to the front of the building or in the front yard, shall be permitted for a period not to exceed seven (7) days, four times per calendar year. Such temporary freestanding sign shall be located no closer than 15 feet from the street right-of-way line or a side lot line.
    - B. Project Real Estate/Construction Signs. One (1) project real estate/ construction sign shall be permitted for each street frontage for the duration of construction or only during the time needed. Such signs shall be a maximum of thirty-two (32) sq. ft. and have a maximum height of eight (8) feet and be located a minimum of fifteen (15) feet from any street right-of-way. A real estate or construction sign shall be erected and maintained on a lot only during the period of time that the parcel, or development, is up for sale, rent, or lease or the building project is under construction. When seventy-five percent (75%) of all lots/dwelling units in the development have been sold, the project real estate or construction sign shall be removed. After such removal, individual signs may be erected on the remaining lots/units in conformance with Section 1183.06 (a)(1).
  - (3) Official public interest sign or directional signs as authorized by the Mayor. When authorizing such sign(s) the Mayor shall also determine the entity responsible for erecting and removing the sign(s) and the length of time the sign(s) may be in place.
- (b) Temporary Signs in Nonresidential Districts. The following regulations for temporary signs in non-residential districts are in addition to the maximum sign area and height regulations set forth in Section 1183.05.
  - (1) Window Signs. The area of temporary window signs, either affixed thereto, or within two (2) feet of the window and visible from the outside the building, shall not exceed thirty-five percent (35%) of the window area. However, since the maximum coverage area in Schedule 1183.05(a) applies to all window signs - both permanent and temporary - the allowance for temporary window signs is reduced to the extent that permanent window signs are utilizing a portion of the thirty-five (35%) percent coverage allowance.
  - (2) Project Real Estate/Construction Signs. One (1) project real estate or construction sign for a development project shall be permitted for each street frontage, shall be a maximum of thirty two (32) square ft., be a maximum height of eight (8) ft. and located a minimum of ten (10) feet from any street right-of-way. Such a project real estate or construction sign shall be erected and maintained only during the period of time that the parcel is up for sale, rent, or lease or the building project is under construction. When any permanent sign has been installed on the property prior to the completion of construction, such temporary construction sign shall be removed within two (2) business days of installation of the permanent identification sign.
  - (3) Other Temporary Signs.
    - A. Temporary signs, whether freestanding signs or banners attached to the front of the building or on the roof, shall be permitted for a period not to exceed fourteen (14) days and not more than four (4) times per calendar year. In a multiple tenant building on site, each tenant must confine these signs to a location on the wall of the business or within twenty (20) ft. of the business. A roof sign permitted pursuant to this Section may not

extend above the surface of the roof more than eight (8) feet.

- B. Sandwich board signs and similar types of temporary signs, for the purpose of promoting the business during normal business hours, shall be permitted in the C-3, C-4, and C-5 Districts. Such signs shall be placed no more than five (5) feet from the front of the building, shall not be placed in the public right-of-way, and shall not obstruct a walkway reserved for public passage. Such signs shall not exceed three (3) feet in height or two (2) feet in width. Sandwich board signs must be placed indoors at the close of each business day.
- C. Within sixty (60) days of and not more than five (5) days after a general, special, or primary election additional non-commercial temporary signs are permitted on property provided that no sign shall be greater than sixteen (16) square feet in area.
- D. Official public interest sign or directional signs as authorized by the Mayor. When authorizing such sign(s) the Mayor shall also determine the entity responsible for erecting and removing the sign and the length of time the sign(s) may be in place.

(Ord. 67-2012. Passed 9-13-12.)

#### **1183.07 PROHIBITED SIGNS.**

All signs not expressly permitted in this Chapter shall be prohibited in the City. Such signs include but are not limited to the following:

- (a) Animated, flashing, moving, blinker, racer type, intermittent, rotating, moving, animated, or revolving signs, whirligig devices, inflatable signs and tethered balloons, pennants, flags, ribbons, streamers, spinners, exposed light bulbs, and strings of lights not permanently mounted to a rigid background, and other similar types of attention-getting devices, except those that are expressly permitted in this Chapter.
- (b) Billboards;
- (c) Merchandise, equipment, products, vehicles or other items not themselves for sale or rent and placed and marked for attention getting, identification or advertising purposes;
- (d) Permanent signs erected or attached to accessory structures, including outdoor furniture, benches, tables and chairs unless expressly permitted in this Chapter;
- (e) Signs or advertising devices which attempt, or appear to attempt, to direct the movement of traffic, or which interfere with, imitate or resemble an official sign, signal or device; and
- (f) Roof signs except when expressly permitted in Section 1183.06(b)(3).

(Ord. 67-2012. Passed 9-13-12.)

#### **1183.08 DESIGN CRITERIA, CONSTRUCTION AND MAINTENANCE.**

In addition to ensuring compliance with the numerical standards of these regulations, all signs shall comply with the following:

(a) Design Criteria.

- (1) The lettering shall be large enough to be easily read but not overly large or out of scale with the building or site.
- (2) The sign message should be consolidated into a minimum number of elements.
- (3) The ratio between the message and the background shall permit easy recognition of the message.
- (4) The size, style and location of the sign shall be appropriate to the activity of the site.
- (5) The sign shall complement the building and adjacent buildings by being designed and placed to enhance the architecture of the building.
- (6) Signs shall be designed with a limited number, and harmonious use of colors.

(b) Construction Standards.

- (1) The construction, erection, safety and maintenance shall comply with all applicable building codes.
- (2) All signs shall be constructed in a professional manner in conformance with the appropriate building code and other applicable requirements of the City and shall be structurally sound.
- (3) All signs shall be located and secured so as to pose no threat to pedestrian or vehicular traffic.
- (4) Permanent signs shall be fabricated on and of materials that are of good quality and good durability.
- (5) Electric signs and all permanent signs involving structural requirements of the applicable building code shall be installed, repaired, altered and serviced only by a contractor licensed to perform such tasks. Wiring supplying electricity to free-standing signs shall be installed underground.
- (6) No sign shall be erected to project over or obstruct any window, door, fire escape, balcony, platform, stairway, ladder, vent or other means of ingress of any building.
- (7) No sign shall be attached to a utility pole, tree, trash receptacle, bench or other structure not intended or approved as a sign support.
- (8) Temporary signs shall be durable and weather-resistant, and fastened or anchored sufficiently, whether attached to the building or positioned in the ground.
- (9) No sign regulated by any of the provisions of this section shall be erected in the right-of-way or at the intersection of any streets in such a manner as to obstruct free and clear vision, or at any location where, by reason of the position, shape or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device, or which makes use of the words "STOP", "LOOK", "DANGER" or any other word, phrase, symbol or character in such a manner as to interfere with, mislead or confuse traffic.
- (10) In the event there is a conflict between the provisions of this section and the provisions of any applicable building codes, the provisions of the applicable building code shall govern.

(c) Sign Maintenance.

- (1) The property owner, occupant or other person responsible for the sign shall maintain the sign in a condition fit for the intended use and he/she shall have a continuing obligation to comply with all applicable building code requirements.
- (2) If the Zoning Administrator finds that any sign is unsafe, insecure, a menace to the public, or constructed, erected, or maintained in violation of the provisions of this Code, notice shall be given in writing by the Zoning Administrator to the owner. The owner of the sign shall, within seventy-two (72) hours of such notification, correct such unsafe condition or remove the sign. If the correction has not been made within the allotted seventy-two hours, the sign may be removed or altered by the City to comply with these regulations at the expense of the owner or occupant of

the property upon which the sign is located. The Zoning Administrator or designated agent may cause any sign, which, in the City's opinion, creates a danger to persons or property to be removed immediately and without notice.

- (3) Whenever any sign, either conforming or non-conforming to these regulations, is required to be removed for the purpose of repairing, refurbishing or repainting, the same may be done without a permit or any payment of fees provided that all of the following conditions are met:
    - A. There shall be no alteration or remodeling to the sign base or sign support(s) or the mounting of the sign itself.
    - B. There shall be no enlargement or increase in any of the dimensions of the sign or its structure.
    - C. The sign shall be accessory to a legally permitted, conditional or non-conforming use.
  - (4) The Zoning Administrator may order any sign to be painted or refurbished whenever needed to keep the sign in a neat and safe condition. All supporters, guys, braces and anchors for such signs shall be maintained in a safe condition.
  - (5) The face of any permanent sign related to a business that has not been conducted on the premises for 180 consecutive days, or fails to serve the purposes for which it was intended, or evidences a lack of maintenance, shall be removed by the owner, agent or person having the beneficial use of the building, structure or land upon which such sign is located, within ten (10) business days after written notice by the Zoning Administrator, and the sign area shall be replaced by a neutral, single background color panel or similar cover. If the sign is comprised of individually raised letters, the letters shall be removed. Upon failure to comply with such notice within the time specified in such order, the Zoning Administrator or designated agent is hereby authorized to cause removal of such sign, and any expense incident thereto shall be paid by the owner of the property on which the sign is located.
- (d) Illumination.
- (1) Light sources shall be shielded from all adjacent buildings and streets.
  - (2) Lights shall not be of such brightness so as to cause glare that is hazardous to pedestrians or motorists, or cause reasonable objection from adjacent residential districts.
  - (3) Signs shall not include flashing, moving, or intermittent lighting in which any part of the message changes at a rate of more than once every thirty (30) seconds.
  - (4) The illumination of signs shall not obstruct traffic control or any other public informational signs. Signs visible from sight lines along streets shall not contain symbols or words, or red and green lights that resemble highway traffic signs or devices.
  - (5) Signs on single-family, two-family, cluster single-family, or attached style-family property shall not be illuminated.  
(Ord. 67-2012. Passed 9-13-12.)

**1183.09 REGULATINOS FOR NONCONFORMING SIGNS.**

- (a) Maintenance of Nonconforming Signs. Nonconforming signs shall be maintained in good condition in accordance with the requirements of this Section.
- (b) Alteration, Relocation, or Replacement of Nonconforming Signs. A nonconforming sign shall not be structurally altered, relocated, or replaced unless it is brought into compliance with the provisions of this Chapter.
- (c) Reconstruction of Damaged Sign. If a sign face and/or its support is damaged to the extent where the repair cost exceeds 50% of the replacement cost of the sign, the sign shall be removed or brought into compliance with this Chapter. If the repair costs do not exceed 50% of the replacement cost of the sign, the sign may be repaired, subject to approval by the Planning Commission.
- (d) Termination. A legal nonconforming sign shall lose its legal nonconforming status, and therefore shall be brought into conformance with this Chapter or removed, when any of the following occur:
  - (1) The size or shape of the sign is changed; or
  - (2) The building to which the sign is accessory is renovated or remodeled to the extent that more than 50% of the gross floor area is removed or replaced, or otherwise affected by renovation or remodeling; or
  - (3) The sign is abandoned because the building to which the sign is accessory has been unoccupied for six (6) months or longer.  
(Ord. 67-2012. Passed 9-13-12.)

**1183.10 ADMINISTRATIVE PROCEDURES.**

No person shall erect, locate, move, alter, or replace any sign or cause a sign to be located or maintained, unless all provisions of this Chapter have been met.

- (a) Signs Requiring a Permit. The Zoning Administrator shall review and act on applications for signs for permits as specified in Schedule 1183.10(a) and according to the design and construction criteria set forth in this Chapter.

**Schedule 1183.10(a)**

| Type of Sign   | Permit Required | No Permit Required |
|--|-----------------|--------------------|
| <b>Residential Districts</b>   |                 |                    |
| Permanent Signs on Residential Property                                |                 | X                  |
| Permanent Signs on Non-Residential Property                            | X               |                    |
| Temporary Signs on Residential Property                                |                 | X                  |
| Temporary Signs on Non-Residential Property                            |                 | X                  |
| Instructional Signs  | X               |                    |
| Official non-advertising public interest signs authorized by the Mayor |                 | X                  |
| <b>Non-Residential Districts</b>                                       |                 |                    |
| Permanent Signs  | X               |                    |
| Temporary Window Signs   |                 | X                  |
| Other Temporary Signs  | X               |                    |
| Instructional Signs  | X               |                    |

- (b) Signs Exempt from the Regulations of this Chapter. The following signs and/or related visual devices and/or means of communication shall be exempt from these regulations.
- (1) Miscellaneous traffic and other official signs of any governmental agency, such as railroad crossing signs, signs indicating danger, or signs used as aids to service or safety.
  - (2) Temporary decorations or displays celebrating the occasion of patriotic or religious holidays.
  - (3) Flags, emblems, or insignia of any nation or political subdivision.
  - (4) Signs incidental to the legal and zoning processes of the City of Tallmadge and necessary to the public safety and welfare.
- (c) Application Requirements. An application for a sign shall be made to the Zoning Administrator in a form and with the number of copies established by the Zoning Administrator. The application shall present the sign in a manner which best illustrates how the sign shall be experienced by the public after it is erected on the site. Specifically, the application shall include:
- (1) A photograph, or drawings, and site plan showing the location of the sign and its relationship to the building, the building setbacks and lot width, the locations and square footage areas of all existing signs on site, the adjacent parcels and parking lots, drives and sidewalks;
  - (2) Detailed drawings showing the design of the sign, including size, style of lettering, logo and other graphic features, colors of the applied lettering and background, materials of the sign and the frame or structure;
  - (3) Construction, erection or fastening details, including wattage of electric lamps or illuminating tubes, if applicable; and
  - (4) A permit fee for each sign application, pursuant to a fee schedule established by City Council.
- When any person other than the owner of the property submits a sign application, the owner of the property or a designated agent for the owner shall also sign such application.
- (d) Permit Issuance. The Zoning Administrator shall be responsible for the issuance of a sign permit when it is determined that all applicable provisions of this Chapter have been met by the applicant.
- (e) Inspection. Prior to installation, all signs are subject to inspection, whether a permit is required or not.
- (1) The Zoning Administrator or any other official of the City is hereby authorized to enter upon any property or premise to determine if the provisions of this Chapter are being complied with. Such inspection may be made at any reasonable time.
  - (2) The Zoning Administrator may order removal of any sign that is not maintained in accordance with the provisions of this Chapter.
- (f) Modifications. Any proposed sign that is not in compliance with the objective standards in this Chapter may be reviewed by the Planning Commission. When reviewing the appropriateness of such modification from the regulations herein, the Planning Commission shall approve such sign only when it determines that:
- (1) Visibility of the sign in compliance with this Chapter will be impeded because of such factors as: topographic conditions on and around the property; the location of buildings and structures on the site and/or surrounding properties; speed of traffic and the number of travel lanes on the adjacent roadway.
  - (2) The modified sign is of such size and scale to be appropriate for the size of the building and the portion of the building (panel, fascia, wall, etc.) on which the sign will be placed.
  - (3) The proposed sign is the minimum of relief necessary to assure it is legible to the intended viewers which are typically the passing motorists.
  - (4) The additional sign, the additional sign area, the alternative location that is proposed, and/or the design of the proposed sign will not adversely impact the adjacent residential areas or, otherwise, compromise any other public interests.
- (Ord. 67-2012. Passed 9-13-12.)

## CHAPTER 1185

### Nonconforming Uses

#### 1185.01 Purpose.

#### 1185.02 Regulations.

#### 1185.03 Continuation of existing uses conditionally permissible.

### CROSS REFERENCES

Nonconforming uses, retroactive measures - see Ohio R.C. 713.15

Defined - see P. & Z. 1133.01(56)

#### 1185.01 PURPOSE.

The purpose of this Chapter is to provide for the continuation of uses that do not conform to the existing zoning, but which were in operation prior to the enactment of this Zoning Code.

(Ord. 89-1997. Passed 12-11-97.)

#### 1185.02 REGULATIONS.

The lawful use of any building or land existing at the effective date of this Zoning Code may be continued, although such use does not conform with the provisions of this Zoning Code, provided the following conditions are met:

- (a) Alterations. A non-conforming building or structure may be altered, improved, reconstructed, enlarged or extended provided such work does not exceed, in building area during any ten year period, sixty percent (60%) of the total area of the building or structure, unless the building or structure is changed to a conforming use.
- (b) Nonconforming to Nonconforming Use Substitution. A non-conforming use may be changed to another non-conforming use provided that the proposed non-conforming use is not more objectionable than the existing non-conforming use as determined by the Planning Commission.
- (c) Restoration. Nothing in this Zoning Code shall prevent the reconstruction, repairing, rebuilding, and continued use of any non-conforming building or structure damaged by fire, collapse, explosion, or acts of God, subsequent to the date of this

Zoning Code wherein the expense of such work does not exceed sixty percent (60%) of the fair market value of the building or structure at the time such damage occurred.

- (d) Construction Approved Prior to Zoning Code. Nothing in this Zoning Code shall prohibit the completion of construction and use of a non-conforming building for which a zoning certificate has been issued prior to the effective date of this Zoning Code, provided that construction is commenced within ninety days after the issuance of such certificate; that construction is carried on diligently and without interruption for a continuous period in excess of thirty days; and that the entire building shall have been completed within two years after the issuance of the zoning certificate.
- (e) Displacement. No non-conforming use shall be extended to displace a conforming use.
- (f) Discontinuance or Abandonment. Whenever a non-conforming use has been discontinued or abandoned for a period of one year, 12 consecutive months, such discontinuance or abandonment shall be considered conclusive evidence of an intention to discontinue or abandon legally the non-conforming use. At the end of that one year period of discontinuance or abandonment the non-conforming use shall not be re-established, and any further use shall be in conformity with the provisions of this Zoning Code. Discontinuance or abandonment shall mean that the structure or land has remained vacant, unoccupied, unused or has ceased the daily activities or operations which had previously occurred.
- (g) Illegal Nonconforming Uses. Non-conforming uses existing at the effective date of this Zoning Code established without a zoning certificate, or those non-conforming uses which cannot be shown conclusively as existing prior to the effective date of this Zoning Code shall be declared illegal non-conforming uses and shall be discontinued within a period of two years following the effective date of this Zoning Code.
- (h) Unsafe Structures. Nothing in this Zoning Code shall prevent the strengthening or restoring, to a safe condition, of any portion of a building or structure declared unsafe by a proper authority.
- (i) Certificate of Nonconforming Use. The Planning Commission shall issue a "Certificate of Non-conforming Use" within one year of the effective date of this Zoning Code, to all known owners of property, the use of which does not conform to the provisions of the use zone in which the property is located.
- This provision shall apply only to commercial and industrial uses for which no fee shall be charged.
- (1) In accordance with the provision of this section, no use of land, buildings or structures shall be made other than that specified on the "Certificate of Non-conforming Use" unless such use shall be in conformity with the provisions of the use zone in which the property is located.
- (2) A copy of each "Certificate of Non-conforming Use" shall be filed in the office of the Zoning Department.
- (j) District Changes. Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another of a different classification, the foregoing provisions shall also apply to any non-conforming use existing therein.
- (Ord. 89-1997. Passed 12-11-97.)

#### **1185.03 CONTINUATION OF EXISTING USES CONDITIONALLY PERMISSIBLE.**

- (a) All uses existing at the time of passage of this Zoning Code and conditionally permissible in their respective districts under this Zoning Code, shall be issued conditional zoning certificates within one year after the passage of this Zoning Code.
- (b) The certificates shall be issued by the Planning Commission and no public hearing shall be required nor shall a fee be charged for such certificate.
- (Ord. 89-1997. Passed 12-11-97.)

### **CHAPTER 1187**

#### **Off-street Parking and Loading Requirements**

- 1187.01 General requirements.**
- 1187.02 Off-street parking and design standards.**
- 1187.03 Determination of required spaces.**
- 1187.04 Minimum number of off-street parking spaces required.**
- 1187.05 Joint or collective parking facilities.**
- 1187.06 Off-street loading space requirements.**
- 1187.07 Off-street loading space design standards.**
- 1187.08 Landscaping and screening requirements.**
- 1187.09 Submission to Planning and Zoning Commission.**
- 1187.10 Appearance Commission action. (Repealed)**
- 1187.11 Action by the Planning and Zoning Commission.**
- 1187.12 Appeals.**
- 1187.13 Modifications.**

#### **CROSS REFERENCES**

Off-street parking facilities - see Ohio R.C. 717.05  
Prohibited standing or parking places - see TRAF. 351.03  
Truck loading zones - see TRAF. 351.09

#### **1187.01 GENERAL REQUIREMENTS.**

Any building, structure or use of land, when erected or enlarged, shall provide for off-street parking spaces for automobiles in accordance with the following provisions of this Chapter. A parking plan shall be required for all uses except one, two and three family dwellings. The parking plan shall be submitted to the Zoning Department as part of the application for the zoning certificate. The plan shall show the boundaries of the property, parking spaces, access driveways, circulation patterns, drainage and construction plans, boundary walls, fences and a screening plan, as appropriate.

(Ord. 89-1997. Passed 12-11-97.)

#### **1187.02 OFF-STREET PARKING AND DESIGN STANDARDS.**

All off-street parking facilities including entrances, exits, circulation areas and parking spaces shall be in accordance with the following standards and specifications:

(a) Parking Space Dimensions. Each off-street parking space shall have an area of not less than 9 feet by 20 feet, exclusive of access drives or aisles and shall be of useable shape and condition.

(b) Access. There shall be adequate provisions for ingress and egress to all parking spaces. Where the lot or parking spaces do not provide direct access to a public street, an access drive shall be provided, with a dedicated easement of access as follows:

(1) Entrance and exits shall be located to minimize traffic congestion and avoid undue interference with pedestrian access at street intersection corners. There shall not be more than two accessways abutting any streets. Such accessways shall not be less than thirty (30) feet in width at the street right-of-way nor more than forty-five (45) feet at the curb cut line of the street. Residential uses may have accessways of not less than ten feet at the right-of-way nor more than forty-five (45) feet at the curb cut line of the street.

(2) All parking spaces, except those required for one, two or three family dwellings, shall have access to a public street in such a manner that any vehicle leaving or entering the parking area from or into a public street shall be traveling in a forward motion.

(3) Parking for uses not permitted in a residential zone shall not be permitted in a residential zone, nor shall any R-District property be utilized as access for uses not permitted in that R-District.

(c) Setbacks. The location of off-street parking facilities may be located in the required yards as specified elsewhere in this Code.

(1) Off-street parking facilities shall not be located in the required front and side yard setbacks.

(2) A minimum setback of five feet shall be required from all property lines.

(d) Screening. In addition to the setback requirements specified in this Chapter for off-street parking, screening shall be provided on each side of the parking area facing the public street and adjacent properties as indicated in Section 1187.08 of this Chapter.

(e) Paving. Any off-street parking area except those provided for single family residential dwellings and its driveway shall be surfaced with a pavement of asphalt or concrete of sufficient strength to support vehicular loads imposed on it while providing a durable, dustless surface.

(f) Drainage. All parking spaces, together with driveways, aisles and other circulation areas shall be graded and drained so as to dispose of surface water which might accumulate within or upon such area, and shall be designed to prevent the excess drainage of surface water onto adjacent properties, walkways or onto public streets. Adequate arrangements shall be made to insure acceptable diversion to an adequate storm water drainage system.

(g) Barriers. Wherever a parking lot extends to a property line, fencing, wheelstops, curbs or other suitable barriers shall be provided in order to prevent any part of a parked vehicle from extending beyond the property line and from destroying the screening materials.

(h) Visibility. Access of driveways for parking areas shall be located in such a way that any vehicle entering or leaving such parking area shall be clearly visible by any pedestrian or motorist approaching the access or driveway from a public or private street.

(i) Marking. All parking areas shall be marked with paint lines, curb stones or in some other manner approved by the City and shall be maintained in a clearly visible condition.

(j) Maintenance. Any owner of property used for parking areas shall maintain such areas in good condition without holes and free from all dust, trash, weeds and other debris.

(k) Signage. Where necessary, due to multiple curb cuts, the entrance, exits and the intended circulation pattern shall be clearly marked in the parking area. Signage shall consist of pavement markings or freestanding directional signs in accordance with Chapter 1183.

(l) Lighting. Any lights used to illuminate a parking area shall be so arranged as to direct the light away from the adjacent properties and right-of-way.

(m) Handicapped Spaces. Parking spaces for the physically handicapped shall be provided as required in the Ohio Basic Building Code.

(n) Use of Parking Spaces. No parking areas or spaces shall be used for sales, storage, repair work, dismantling or servicing of any kind, nor for parking for any other than self-propelled vehicles.

(o) Use of Parking Spaces for Temporary Promotions. Parking areas or spaces may be used for temporary promotions or sales which are extensions of the principal business conducted on the property. They may be held for a period not to exceed fifteen days, but not more than two time periods during a calendar year. Such promotions or sales shall be held only upon receipt of a permit issued by the City Building Department. A fee as established by Council shall be charged for such permit. Seasonal plant or tree sales are exempt from the fifteen day time period.

(p) Promotions. Promotions conducted entirely for charitable purposes shall be exempted from this section.

(Ord. 89-1997. Passed 12-11-97.)

### **1187.03 DETERMINATION OF REQUIRED SPACES.**

In computing the number of parking spaces required by this code, the following shall apply:

(a) Where floor area is designated as the standard for determining parking space requirements, floor area shall be the sum of the gross leasable horizontal area of all floors of a non-residential building.

(b) Where seating capacity is designated as the standard for determining parking space requirements, the capacity shall mean the number of seating units installed or each twenty (20) lineal inches of seating facilities.

(c) Fractional numbers shall be increased to the next highest whole number.

(d) Parking space requirements for a use not specifically mentioned in this Code shall be determined by using the most similar and restrictive parking space requirement as specified by the Planning and Zoning Commission.

(e) When the building floor area is designated as the standard for determining parking space requirements and that number is less than the minimum standard, at least one parking space shall be provided on the premises.

(Ord. 89-1997. Passed 12-11-97.)

### **1187.04 MINIMUM NUMBER OF OFF-STREET PARKING SPACES REQUIRED.**



For the purpose of this Zoning Code, the following parking space requirements shall apply.

|  |  |
|--|--|
| (a) Automotive Filling Stations.           | One space per fuel pump.   |
| (b) Automotive Services.                   | Two spaces for each service bay. Automobile car washes shall provide sufficient stacking spaces for three vehicles per bay.  |
| (c) Automotive Sales.                      | One space for each 800 square feet of floor area.  |
| (d) Bed and Breakfast.                     | One space for each guest room plus two spaces for the permanent residence.   |
| (e) Clinics.                               | One space for each 100 square feet of floor area.  |
| (f) Club and lodges.                       | One space for each 200 square feet of floor area.  |
| (g) Convalescent Care Facility.            | One space for each three beds.   |
| (h) Convenience Store.                     | One space for each 100 square feet of floor area.  |
| (i) Child or Adult Day Care Facility.      | One space for each four persons of design capacity.  |
| (j) Educational Institution.               | Two spaces for each classroom plus one space for each four seats in the auditorium. High schools shall also include one space for each ten students at design capacity.    |
| (k) Financial Institution.                 | One space for each 400 square feet of floor area plus sufficient stacking space to accommodate the number of automobiles equal to five times the number of teller windows. |
| (l) Funeral Home.                          | One space for each 100 square feet of floor area plus one reserved space for each hearse or company vehicle.   |
| (m) Hospitals.                             | One space for each two beds.   |
| (n) Hotel/Motels.                          | One space for each sleeping room plus one space for each 400 square feet of public meeting area and/or restaurant space.   |
| (o) Industrial/Manufacturing.              | One space for each 1,000 square feet of floor area.  |
| (p) Office.                                | One space for each 200 square feet of floor area.  |
| (q) Personal Service.                      | One space for each 200 square feet of floor area.  |
| (r) Public Buildings.                      | One space for each 200 square feet of floor area.  |
| (s) Recreational, Non-Commercial.          | One space for each participant at maximum utilization.   |
| (t) Recreational, Commercial.              | One space for each three seats or one space for each 100 feet of floor area, whichever is greater.   |
| (u) Religious Places of Worship.           | One space for each four seats in the place of assembly.  |
| (v) Residential, Multi-Family.             | Two spaces for each dwelling unit.   |
| (w) Residential, Single Family.            | Two spaces for each dwelling unit.   |
| (x) Residential, Two-Family.               | Two spaces for each dwelling unit.   |
| (y) Research and Development Laboratories. | One space for each 500 square feet of floor area.  |
| (z) Restaurants.                           | One space for each 100 square feet of floor area.  |
| (aa) Restaurants, Fast Food.               | One space for each 100 square feet of floor area plus sufficient stacking space for five vehicles at each drive through window.  |
| (bb) Retail Business.                      | One space for each 150 square feet of floor area.  |
| (cc) Shopping Center.                      | Five spaces for each 1,000 square feet of floor area.  |
| (dd) Theaters.                             | One space for each four seats in the hall or auditorium.   |
| (ee) Vet. Clinic/Animal Hospital.          | Four spaces for each examination room.   |
| (ff) Warehousing.                          | One space for each 1,000 square feet.  |

(Ord. 89-1997. Passed 12-11-97.)

**1187.05 JOINT OR COLLECTIVE PARKING FACILITIES.**

The joint or collective parking provision of required off-street parking areas shall comply with the following standards and requirements:

- (a) All required parking spaces shall be located on the same lot with the building or use served, except that where an increase in the

number of spaces is required by a change or enlargement of use, or where such spaces are provided collectively or jointly by two or more buildings or establishments, the required spaces may be located not farther than five hundred (500) feet from the building served.

- (b) The total of such off-street parking spaces supplied collectively shall be not less than the sum of the requirements for the various uses computed separately.
- (c) If the joint parking facilities are proposed for two uses occurring at different times during the day, the Planning and Zoning Commission shall have the authority to consider a request to decrease the amount of parking spaces required for those uses.
- (d) In any case where the required parking spaces are not located on the same lot with the building or use served, or where such spaces are collectively or jointly provided and used, a written agreement thereby assuring their retention for such purposes shall be properly drawn and executed by the parties concerned, approved as to form by legal counsel of the City and filed with the application for a zoning permit.

(Ord. 89-1997. Passed 12-11-97.)

#### **1187.06 OFF-STREET LOADING SPACE REQUIREMENTS.**

In any district in connection with every building or part thereof hereafter erected and having a gross floor area of five thousand (5,000) square feet or more which is to be occupied by manufacturing, storage, warehouse, goods display, retail store, wholesale store, market, hotel, hospital, funeral home, laundry, dry cleaning or other uses similarly requiring the receipt or distribution by vehicles of materials or merchandise, there shall be provided and maintained, on the same lot with such building, at least one off-street loading space plus one additional such space for each twenty thousand (20,000) square feet or fraction thereof of gross floor area so used in excess of five thousand (5,000) square feet.

(Ord. 89-1997. Passed 12-11-97.)

#### **1187.07 OFF-STREET LOADING SPACE DESIGN STANDARDS.**

All off-street loading spaces shall be in accordance with the following standards and specifications:

- (a) Dimensions. Each loading space shall have a minimum dimension not less than 12 feet in width, 40 feet in length and a vertical clearance of not less than 14 feet in height.
- (b) Setbacks. Notwithstanding other provisions of this regulation and other setback requirements, off-street loading spaces may be located in the required rear or side yard of any district provided that not more than 80% of the required rear yard or side yard is occupied.
- (c) Screening. In addition to the setback requirements specified above, screening shall be provided on each side of an off-street loading space that abuts any residential district.
- (d) Access. All required off-street loading spaces shall have access from a public street in such a manner that any vehicle leaving the premises shall be traveling in a forward motion.
- (e) Paving. Any required off-street loading spaces, together with its appurtenant driveways, aisles and other circulation areas, shall be surfaced with a pavement having an asphalt or concrete binder of sufficient strength to support vehicular loads imposed on it while providing a durable, dustless surface.
- (f) Drainage. All loading spaces, together with driveways, aisles and other circulation areas shall be graded and drained so as to dispose of surface water which might accumulate within or upon such area, and shall be designed to prevent the excess drainage of surface water onto adjacent properties, walkways or onto public streets. Adequate arrangements shall be made to insure acceptable diversion to an adequate storm water drainage system.
- (g) Lighting. Any lights used to illuminate a loading area shall be so arranged as to reflect the light away from any adjacent properties or right-of-way.

(Ord. 89-1997. Passed 12-11-97.)

#### **1187.08 LANDSCAPING AND SCREENING REQUIREMENTS.**

The purpose of this section is to provide for visual screening or landscape buffers to obscure the view of outdoor rubbish areas, dumpsters, loading areas, outdoor storage, and parking lots.

- (a) Screening Requirements. Screening of outdoor rubbish areas, dumpsters, loading areas, outdoor storage and parking lots from the public street and adjacent properties shall be provided in accordance with the following regulations and as approved by the Planning and Zoning Commission in addition to the setback and yard requirements provided elsewhere in this Zoning Code.
  - (1) Outdoor rubbish areas, dumpsters, loading areas and outdoor storage shall consist of one or a combination of the following as determined by the Planning and Zoning Commission:
    - A. A dense vegetation planting of trees or shrubs using a variation of plants both in species and heights which shall be equally effective in winter and summer. Composition shall not be less than three feet in height at full growth.
    - B. A solid six foot high brick masonry wall, a uniformly painted solid six foot high fence, or other structure as the Planning and Zoning Commission shall determine to be appropriate for the specific site conditions.
    - C. A landscaped mound or berm, not more than two feet in height, with solid landscape screening twenty-four (24) inches in height spaced at two feet on center at the top of the mound or berm. Mound or berm shall be covered with minimum four inch layer of shredded hardwood bark mulch.
  - (2) Parking lot screening shall be as follows:
    - A. A hedge row consisting of a double staggered row of a single species of shrubs, with a minimum height of twenty-four (24) inches at planting. The shrubs in each row shall be spaced at a maximum of four feet on center with a distance between the staggered rows to be two feet, planted in a mulched bed which shall be a minimum width of four feet. Screening height shall be maintained at three feet at maturity.
    - B. Screening shrubs shall be either balled and burlapped or container grown. The following are examples of acceptable shrubs for sunny conditions: Compact Burning Bush, Northern Bayberry, Nordic Compact Inkberry, and Regal's Border Privet.  
The following are examples of acceptable shrubs for shady conditions: Compact European Cranberry Bush Viburnum and Arrowwood Viburnum. All shrubs shall be of a salt tolerant species.

- C. Screening planting beds shall be mulched with a minimum of four inches of shredded hardwood bark mulch. The parking lot side shall have a six inch high concrete curb. Lawn side to be edge cut.
- (3) Protection and maintenance. Whenever screening is adjacent to parking lots or driveways, such screening shall be protected by wheel stops, curbs or bumper blocks. Replacement of dead or damaged landscape screening and appurtenances thereto shall be the responsibility of the current owner.
- (4) Snow removal areas. Parking lots shall be designed to allow for designated snow areas in order to protect all landscape screening.
- (b) Advertising and Signs. All landscaped screening beds shall be free of all temporary signs.
- (c) Installation and Maintenance. The desired screening effect and mature height of three feet shall be achieved no later than three years after the initial installation. Thereafter, required landscape screening shall be maintained in healthy condition by the current owner, and shall be replaced when deemed necessary by the Zoning Inspector. Replacement landscape screening shall match existing for size, spacing and species. Working height for parking lot screening shall be maintained at three feet.
- (Ord. 89-1997. Passed 12-11-97.)

**1187.09 SUBMISSION TO PLANNING AND ZONING COMMISSION.**

Detailed drawings including the location, width and number of entrance driveways to all necessary parking and off-street loading facilities shall be submitted to the Planning and Zoning Commission with the exception of one, two or three family dwellings, for approval prior to the granting of any zoning certificate. Such drawing shall show the number of spaces and locations, dimensions and descriptions of all features enumerated in this Chapter, Chapter 1141 and as required elsewhere in this Zoning Code. The Planning and Zoning Commission may require, in addition to those enumerated, further structural or landscaping features such as bumper guards, curbs, walls, fences, shrubs, trees, ground cover or hedges to further the intent and purposes of this Zoning Code. The Planning and Zoning Commission, in addition, may recommend such changes in location, width and number of driveways as it shall determine are necessary to eliminate any potential traffic hazards.

(Ord. 89-1997. Passed 12-11-97.)

**1187.10 APPEARANCE COMMISSION ACTION. (REPEALED)**

(EDITOR’S NOTE: Former Section 1187.10 was repealed by Ordinance 63-2009, passed May 14, 2009.)

**1187.11 ACTION BY THE PLANNING AND ZONING COMMISSION.**

Within sixty-five (65) days, the Planning and Zoning Commission shall either approve, approve with supplementary conditions, or disapprove the application as presented. If the application is approved or approved with modifications, the Planning and Zoning Commission shall direct the Zoning Inspector to issue a Zoning Certificate listing the specific conditions specified by the Planning and Zoning Commission for approval.

(Ord. 89-1997. Passed 12-11-97.)

**1187.12 APPEALS.**

Appeals from the Planning and Zoning Commission shall be made to the Board of Zoning Appeals pursuant to Section 1135.07.

(Ord. 89-1997. Passed 12-11-97.)

**1187.13 MODIFICATIONS.**

The Planning and Zoning Commission may authorize a modification, reduction, or waiver of the foregoing requirements if it should find that the peculiar nature of the residential, business, trade, industrial, other use, exceptional situation or condition would justify such action.

(Ord. 89-1997. Passed 12-11-97.)

**CHAPTER 1189**

**Conditional Uses**

- 1189.01 Purpose.**
- 1189.02 Application for conditional zoning certificate.**
- 1189.03 Processing by the Zoning Inspector.**
- 1189.04 General standards for conditional uses.**
- 1189.05 Conditionally permitted uses.**
- 1189.06 Similar permitted and conditionally permitted uses.**
- 1189.07 Conditional zoning certificates for special nonresidential development.**
- 1189.08 Supplementary conditions and safeguards.**
- 1189.09 Public hearing by the Planning and Zoning Commission.**
- 1189.10 Notice of public hearing in newspaper.**
- 1189.11 Notice to parties of interest.**
- 1189.12 Notice of public hearing on property.**
- 1189.13 Appearance Commission action.**
- 1189.14 Planning and Zoning Commission action.**
- 1189.15 Council action.**
- 1189.16 Issuance and revocation of certificates.**
- 1189.17 Reapplication.**
- 1189.18 Appeals.**
- 1189.19 Expiration of conditional use permit.**

**CROSS REFERENCES**

Council may amend districting or zoning - see Ohio R.C. 713.10  
Administration and enforcement - see P. & Z. Ch. 1135

### **1189.01 PURPOSE.**

(a) Until recent years, the regulation of all uses of land and structures through zoning has been accomplished by assigning each use to one or more use districts. However, the functions and characteristics of an increasing number of new kinds of land uses combined with conclusive experience regarding some of the older, familiar kinds of uses call for a more flexible and equitable procedure for properly accommodating these activities in the community. It should be recognized that the forces that influence decisions regarding the nature, magnitude, and location of such types of land use activities are many and varied, depending upon functional characteristics, competitive situations, and the availability of land. Rather than assign all uses to special, individual and limited zoning districts, it is important to provide controllable and reasonable flexibility in requirements for certain kinds of uses that will allow practicable latitude for the investor, but that will, at the same time, maintain adequate provision for the security of the health, safety, convenience, and general welfare of the community's inhabitants.

(b) In order to accomplish such a dual objective, provision is made in this Chapter for a more detailed consideration of each of certain specified activities as it may relate to proposed conditions of location, design, size, operation, intensity of use, generation of traffic and traffic movements, concentration of population, processes and equipment employed, amount and kind of public facilities and services required, together with many other possible factors. Land and structure uses possessing these particularly unique characteristics are designated as Conditionally Permissible Uses and are permitted through the issuance of a Conditional Zoning Certificate with such conditions and safeguards attached as may be deemed necessary for the protection of the public welfare.

(c) The City of Tallmadge shall be exempt from the conditional use provisions of this Code.

(Ord. 89-1997. Passed 12-11-97.)

### **1189.02 APPLICATION FOR CONDITIONAL ZONING CERTIFICATE.**

An application for a conditional zoning certificate shall be filed with the Zoning Inspector by at least one owner, owner's agent or lessee of properties for which such conditional use is proposed. The application shall be signed by the owner or applicant attesting to the accuracy of all information supplied by the application. All required data must be provided at least fourteen (14) days prior to the regularly scheduled meeting of the Planning and Zoning Commission.

At a minimum, the application shall contain the following information provided however that the Zoning Inspector may waive certain submission requirements where it is determined that it is not applicable:

(a) Completion by applicant of application forms supplied by the Zoning Inspector.

(b) Twenty (20) copies of the site plan, plot plan or development plan of the entire property being considered, drawn to a reasonable scale and showing the location of all abutting streets, the location of all existing and proposed structures, the types of buildings and their uses.

(c) General plans including type of construction, exterior materials, front, side and rear elevation, floor plans, storm drainage and sanitary sewer drainage, shall be submitted with the application. The applicant, shall however, furnish more detailed plans upon request of the Planning and Zoning Commission in regard to any feature of the proposed development as the Commission shall deem necessary in order to adequately review and form conclusions in regard to any feature of the proposed development. Twenty (20) copies of such plans are required.

(d) A statement supported by substantiating evidence regarding the requirements enumerated in Section 1189.04.

(e) A list of the names and addresses of the owners of properties lying within five hundred (500) feet of any part of the property on which the conditional use is requested.

(f) A map of the area within one thousand (1,000) feet of any part of the property on which the conditional use is requested.

(g) Present zoning district.

(h) Description of proposed conditional use.

(i) Application fee as set forth in this Zoning Code. This fee shall not be refundable after the application has been placed on the agenda for Planning and Zoning Commission action. This fee shall not apply to requests by the City government or public schools.

(Ord. 89-1997. Passed 12-11-97.)

### **1189.03 PROCESSING BY THE ZONING INSPECTOR.**

Upon the determination of the Zoning Inspector that all data required in Section 1189.02 has been submitted and is complete, he shall undertake the following:

(a) Schedule the item on the agenda of the next appropriate meeting of the Planning and Zoning Commission.

(b) Notify the Appearance Commission that a request has been filed and shall forward with such notification copies of site plans, proposals, location drawings, applicants statement of support and such other data as is relevant.

(c) Notify Council through the Clerk of Council that a request has been filed. This notification shall include copies of site plans and proposals, location, the petitioner's statement of support and such other data as is relevant.

(Ord. 89-1997. Passed 12-11-97.)

### **1189.04 GENERAL STANDARDS FOR CONDITIONAL USES.**

In addition to specific requirements for conditionally permitted uses that may be specified in the district use regulations, the Planning and Zoning Commission and Council shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

(a) Shall be harmonious and in accordance with the general objectives of this Code;

(b) Shall 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 so that such use shall not change the essential character of the same area;

(c) Shall not be hazardous or disturbing to neighboring uses;

(d) Shall be served adequately by essential public facilities and services;

(e) Shall not be detrimental to the economic welfare of the community;

(f) Shall not involve uses, activities, processes, material, equipment and/or conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

(g) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on

surrounding public streets or roads.

- (h) Shall comply with the City of Tallmadge Thoroughfare Plan. If additional street right-of-way width is required for compliance, the property owner shall dedicate the required land at a time requested by the City at no cost to the property owner.

Council, with the recommendation of the Planning and Zoning Commission, shall have the authority to modify the requirements of this Zoning Code for a conditional use. The Planning and Zoning Commission shall also have the authority to review and grant the minor modification of a use or site plan of an approved conditional use.

(Ord. 89-1997. Passed 12-11-97; Ord. 41-2003. Passed 5-8-03.)

#### **1189.05 CONDITIONALLY PERMITTED USES.**

Regulations pertaining to Conditionally Permitted Uses as listed in Chapters 1153 through 1167 are as follows:

102 All structures, activity areas, and parking areas should be located at least fifty (50) feet from all property lines.

103 Loud speakers which cause a hazard or annoyance shall not be permitted.

104 Recreational facilities shall be provided as deemed necessary.

105 A. All points of entrance or exit should be located no closer than two hundred (200) feet from the intersection of two major thoroughfares; not closer than one hundred (100) feet from the intersection of a major thoroughfare and a local or collector thoroughfare or two local or collector thoroughfares.

B. The Planning and Zoning Commission shall, in those cases deemed necessary, require streets, storm sewers, sanitary sewers, and sidewalks in such developments. Such facilities shall be equal to minimum requirements for residential use under subdivision regulations.

C. The Planning and Zoning Commission may require parking facilities in excess of those set forth in Chapter 1187 as they deem necessary.

106 There shall be no more than one advertisement oriented to each abutting road identifying the activity.

107 No lighting shall constitute a nuisance and shall in no way, impair safe movement of traffic on any street or highway; no lighting shall shine directly on adjacent properties.

108 Such developments should be located on a collector street or major thoroughfare.

110 Such developments should be located adjacent to non-residential uses such as churches, parks, industrial or commercial districts.

111 Such uses shall not require uneconomical extensions of utility services at the expense of the community.

112 Site locations should be preferred that offer natural or man-made barriers that would lessen the effect of intrusion into a residential area.

113 Such uses should be properly landscaped to be harmonious with surrounding residential uses and to adequately buffer the surrounding residential areas.

114 Such structures should be located adjacent to parks and other nonresidential uses such as schools and shopping facilities where use could be made of joint parking facilities.

115 All permitted installations shall be maintained in a neat, orderly condition so as to prevent injury to any single property, any individual or to the community in general.

116 Such uses shall be permitted under the following conditions:

A. Provided that such facilities be located at the extremity of the business district so as not to interfere with the pedestrian interchange between stores in the district and provided further, that it would not limit expansion of the pedestrian oriented facilities.

B. All activities, except those required to be performed at the fuel pumps and car washing, shall be carried on inside a building; if work is performed on a vehicle, such vehicle shall be entirely within a building.

C. If the property fronts on two or more streets, the driveways shall be located as far from the street intersection as practicable.

D. At least a six inch high pedestrian safety curb shall be installed along all street right-of-way lines except at driveway approaches.

117 The area of use shall be completely enclosed by a six foot fence, as the Planning and Zoning Commission shall determine to be appropriate, and appropriately landscaped to be harmonious with surrounding properties.

118 Planned Residential Developments.

A. Purpose. The purpose of this Section is to enable the development and/or redevelopment of properties within the largely built-up areas of the City of Tallmadge in a manner that preserves neighborhood character, allows housing opportunities, enhances property values, and serves the health, safety and welfare interests of the residents of the City of Tallmadge. These purposes may be served by encouraging ingenuity, imagination, and heightened design efforts on the part of builders, architects, site planners, and developers to produce residential developments which are in keeping with the over-all land use and open space objectives of this Zoning Code and the Comprehensive Plan of the City of Tallmadge.

Further, the intent of this subsection is to permit departure from the strict application of use, setback, height, and minimum lot size requirements of existing residential use districts to enable design flexibility for planned developments which:

1. Meet or exceed basic design criteria.

2. Permit a creative approach to the development of residential land.

3. Provide development densities allowing a gradual transition from more intense uses such as higher density residential, commercial, or industrial zoning to less intense zoning. Existing conditional uses shall not be considered in determining transitional areas.

4. Accomplish a more desirable environment than would be possible through the strict application of minimum requirements of this Zoning Code.

5. Provide for an efficient use of land, resulting in smaller networks of utilities and streets and thereby lower housing costs.

6. Enhance the appearance of neighborhoods through preservation of natural features, the provision of underground utilities, and the provision of recreation areas and open space in excess of existing zoning, and subdivision requirements.

7. Provide an opportunity for new approaches to home ownership.

8. Provide an environment of stable character compatible with surrounding residential areas.

9. Provide a pattern of development which preserves trees, open space, outstanding natural topography and geologic features and prevents soil erosion.

B. Minimum Standards for Eligibility. To be eligible for Planned Residential Development status, a project must involve at least 5 acres of contiguous, appropriately zoned residential property. Such property must not be interrupted by any State or Federal highway, arterial roadway, railroad right-of-way, or land not a part of the proposed development. Public and private collector and local streets and utility easements shall not be considered to interrupt a Planned Residential Development.

C. Voluntary Development Procedure. Use of Planned Residential Development is not mandatory for any parcel of ground. The intent and purpose of this process is to provide a voluntary alternate procedure which maximizes the

utilization of land primarily for the benefit, use, ownership and enjoyment of the future residents of the area and the existing residents of the City. Open space and common recreation areas and facilities are the environmental and livability benefits furnished to the homeowner and community in lieu of large individual lots.

- D. Nature of Special Exception. Development plans approved under the provisions of the process contained herein are declared to be in the nature of a special exception.
- E. Location. A Planned Residential Development may be established in a R-3, R-4 or R-5 zoning district in accordance with the goals and objectives of the Comprehensive Plan. A zoning certificate and/or building permit for any structure shall be issued only after plans for such development have been approved by the Planning and Zoning Commission and Council. The location of all structures in a Planned Residential Development shall be located as shown on the approved plans.
- F. Submission of Plans. The developer shall present plans, reports, and related information in sufficient detail to enable the Planning and Zoning Commission and Council to evaluate the proposed development in accordance with the provisions of this section.
- G. Design of a Planned Residential Development.
1. Design Standards. Except as indicated in this Chapter, standards of design and construction for improvements located within a Planned Residential Development shall conform to those standards specified in Chapter 1113 - Design Standards and Chapter 1117 - Uniform Improvement Requirements of the Codified Ordinances of the City of Tallmadge. Where exceptional design or unique site conditions warrant, departure from the City of Tallmadge design standards may be permitted in the following limited areas:
    - Sidewalks one side of street only or none if alternate pedestrian accommodations are provided.
    - Front yard setback.
    - Minimum street right-of-way width.Such departures must be justified by the applicant's narrative explanation and be recommended by the City Engineer.
  2. Open Space.
    - a. No less than thirty percent (30%) of the gross area of the project shall be devoted to open space. With the exception of 25 feet of the minimum setback requirement from existing single-family residential property, and twenty-five feet of the required eighty foot rear yard setback between building walls, the open space area shall not include minimum setbacks as described elsewhere in this section, buildings, parking areas, driveways, public or private roadways or any other impervious surfaces.
    - b. Ownership of an open space shall either be by:
      - i. Dedication to the City of Tallmadge for public purposes of any open space subject to its acceptance by Council.
      - ii. Homeowners or Condominium Association. An incorporated, non-profit organization operating under recorded land agreements through which each lot and/or home owner in a planned residential or other described land area is automatically a member and each lot is automatically subject to a charge for a proportionate share of the expenses for the organization's activities, such as maintaining a common property, and the charge if unpaid, becomes a lien against the property. If the open space is privately held the City may either require a development easement over the land or a deed restriction so as to insure it from being built upon. Covenants and deed restrictions shall be in a form and with content satisfactory to the City Zoning Official and Director of Law.
      - iii. A combination of 1 and 2 above.
    - c. Areas designated for required open space may be used in the following manner:
      - i. Preserved in its natural state.
      - ii. Designated and used for the passive enjoyment of residents of the proposed development (or general public).
      - iii. No more than twenty-five percent (25%) of a dry retention basin shall be included as open space. Wet retention ponds may be included as open space if they are developed as open space amenities supplemented with walkways, wildlife habitat features or other passive recreation amenities such as wildlife viewing areas, benches, etc.
      - iv. Used for active recreation where such uses have been located where they have the least impact on natural amenities and wildlife habitat and where these active recreation uses occupy no more than fifty percent of the total required open space area.
    - d. Maintenance of open space areas.
      - i. Where a Homeowners or Condominium Association has failed to provide adequate maintenance of common open space, the City of Tallmadge in its sole discretion may perform such maintenance and may charge to the Association actual, administrative and legal costs incurred. Unpaid charges shall become a lien against the property. In the interests of preservation of health, safety, and general welfare, failure of the Association to remedy maintenance problems and discharge any liens against it may result in cessation of the issuance of occupancy permits for any property party to the Association until such time as an adequate remedy is provided.
      - ii. Where storm-water detention facilities are provided, a maintenance easement satisfactory to the City Engineer shall be provided to permit equipment access to such facilities for emergency maintenance service.
  3. Permitted Uses. A Planned Residential Development may be composed entirely of single-family detached units, or a mix of single-family detached units and single-family attached units.
  4. Density. Density shall be calculated based on the gross area of property in each eligible zoning district, minus developable land area. Undevelopable land area includes sloping sites with grades in excess of 25 percent, water bodies and wetlands larger than one-quarter acre area, land located within the 100-year flood plain, easement areas where land use is already restricted, existing and proposed street right-of-ways. Where streets are private, a fifty-foot right-of-way shall be assumed for purposes of calculating densities. Planned Residential Development density shall not exceed one (1) times the number of units per developable acre permitted by the zoning districts of land included in the project area.
  5. Height. No building shall exceed a building height of thirty-five (35) feet.
  6. All units shall be harmonious in design and character with the existing neighborhood.
  7. Developers will attempt to incrementally tier density within the Planned Residential Development so as to provide for gradual

- density change.
8. No more than four (4) dwelling units may be attached by common or adjoining walls in single-family attached dwelling portions of a Planned Residential Development. Where more than three units have common or adjoining walls, no more than three (3) units shall front on the same facade.
  9. Minimum living floor area per family:
    - a. Single-family detached dwellings: 1,500 sq. ft.
    - b. Two-, three-, and four-family attached dwellings: 1,200 sq. ft.
  10. Minimum setback requirements:
    - a. From existing single-family residential property 75 ft.
    - b. From other use property 50 ft.
    - c. Minimum front yard setbacks
      - i. From existing public street r-o-w 50 ft.
      - ii. From new public street r-o-w 25 ft.
      - iii. From private street curb or sidewalk 25 ft.
    - d. Minimum side yard distance between buildings 20 ft.
    - e. Minimum rear yard distance between buildings 80 ft.
    - f. Setbacks in excess of minimum requirements may be included as part of required open space.
  11. Minimum street right-of-way of 50 ft.
  12. Minimum off-street parking requirements
    - a. Each dwelling shall be provided with a two car attached garage.
    - b. Guest parking shall be provided at a rate of one space per two dwelling units. The location of guest parking shall be considerate of anticipated need, driveway lengths, front yard setbacks, and other considerations and shall be distributed for the convenience of all units.
    - c. Parking for accessory uses such as pools, clubhouses, etc. shall be determined based on anticipated need.
  13. Landscaping. A general landscape plan shall be provided with the conditional use application. This general plan shall indicate rough grading and general planting plans. A detailed landscape plan shall be submitted and shall receive a recommendation for approval from the Appearance Commission prior to final plan approval by Council. This landscape plan shall indicate compliance with the City of Tallmadge street tree planting policies and shall strive to preserve existing trees and natural vegetation as much as practical. The final landscape plan shall include an appropriate mix of groundcovers, ornamental plants and flowers, deciduous and evergreen shrubs, as well as deciduous and evergreen trees necessary to provide screening of undesirable views, to buffer adjacent uses, to provide individual unit privacy, to screen outdoor use areas from adjacent roadways, and to enhance site aesthetics.
- 119 Such use shall also be used for family dwelling purposes.
- 121 Such uses shall be conducted not closer than fifty (50) feet from any R- District. Where the use abuts upon but is separated from an R-District by a street, the width of the street may be considered as a part of the required setback. The construction, operation, and maintenance of such uses shall be such that they will not be hazardous, noxious or offensive due to the emission of odor, dust, smoke, cinders, gas, fumes, noise, vibration, refuse matters or water carried wastes.
- 122 Each lot shall provide and dedicate for public use a parallel frontage access right-of-way of not less than forty (40) feet in width and running the full width of the lot. Pavement meeting the requirements of the City street standards shall be provided. Pavement and rights-of-way of adjacent lots shall connect and no driveway to the existing thoroughfare shall be permitted closer than two hundred (200) feet from the ramp of any interchange. Temporary driveways shall be permitted closer than two hundred (200) feet to the interchange ramp only until such time that the parallel frontage road is constructed.
- 123 No such business shall be located on any lot fronting thoroughfares as defined in the Tallmadge Thoroughfare Plan.
- 124 No such business shall be located on any lot within 500 feet of any residentially- zoned district or any residentially-used lot.
- 125 No such business shall be located within 500 feet of any public library, private or public elementary school, public park or bike path or place of worship.
- 126 No such business shall be located on any lot within 1,000 feet of any other sexually oriented business.
- 127 No outdoor advertising other than one permitted ground or wall sign.
- 128 No nude graphics allowed in building exterior or sign.
- 129 No shared access driveways will be permitted.
- 130 Sexually Oriented Business will be limited to hours of operation of 10:00 a.m. to 1:00 a.m.
- 131 Such uses shall be permitted under the following conditions:
- A. All proposed restaurant development must be located within the Fine Dining Overlay District areas as defined in Exhibit A.
  - B. Restaurant must derive a minimum of 65% of total revenue sales from food.
  - C. Restaurant is limited to a 20% floor area dedication maximum for bar services.
  - D. Restaurant management must supply sales data upon request, to the City demonstrating compliance with the provisions of Section 1189.05.131(B).
  - E. Not closer than 250 feet to an Adult Entertainment Business.  
(Ord. 56-2017. Passed 9-14-17.)
- 132 Such uses shall be permitted under the following conditions:
- A. No such business shall be located on any lot within 1,000 feet of any other adult amusement arcade.
  - B. Arcades shall open not earlier than 6:00 a.m. and shall close not later than 1:00 a.m.
  - C. All doors to the business used for ingress by patrons shall remain unlocked for purposes of egress during business hours of operation.
  - D. The owner, lessee, and sublessee of the property shall independently provide a written narrative of the business operation.
  - E. Exterior lighting shall be maintained of sufficient intensity to illuminate every means of ingress and egress and adjacent parking areas.
  - F. The premises shall be maintained so that it is handicap accessible throughout.
  - G. No smoking is permitted in the arcade and adequate signage shall be posted conspicuously.

- H. A glass storefront is required allowing full visibility at the sidewalk or right-of-way from the front through the arcade area to the rear of the facility, exclusive of restrooms. No amusement devices shall be placed in restrooms, offices, or private areas.
- I. Windows shall be free and clear of tint. No obstructions shall prevent observing at least fifty percent (50%) of the amusement devices from outside the storefront.
- J. On premises food consumption provision and services shall comply with state, county, and local health regulations.
- K. The names, residence addresses, and telephone numbers of the owner(s), operator(s), and all managers shall be maintained current on file with the Tallmadge Police Department.
- L. No amusement arcade shall locate closer than 500 feet to a church, public park, or school in regular use.
- M. For purposes of this section, an "amusement arcade" shall have the same meaning as set forth in Section 726.02. (Ord. 121-2006. Passed 12-14-06.)

**1189.06 SIMILAR PERMITTED AND CONDITIONALLY PERMITTED USES.**

In addition to the other regulations and standards set forth in this Chapter, the following standards shall be considered by the Planning and Zoning Commission when making a determination that a use is substantially similar to a permitted or a conditionally permitted use within a specific district:

- (a) The nature, predominant characteristics, and intensity of the proposed uses in relation to those uses specified by this Code as being permitted, or in the case of a conditional use conditionally permitted, in that district.
- (b) The size, dimensional requirements, parking requirements, traffic generation potential, and other regulatory considerations normally associated with uses as specified in this Code.

Similar conditionally permitted uses shall follow the conditional use procedures set forth in this Chapter.

(Ord. 89-1997. Passed 12-11-97.)

**1189.07 CONDITIONAL ZONING CERTIFICATES FOR SPECIAL NONRESIDENTIAL DEVELOPMENT.**

(a) Purpose. It is recognized that in a rapidly changing and developing community that it will from time to time become necessary to give consideration to the use of land in certain areas for less or more restrictive purposes than are presently delineated and to preserve insofar as possible, property values and uses and maintain adequate provision for the security of the health, safety, convenience and general welfare of the City as a whole.

(b) Special Nonresidential Development and Use. In order to implement the purpose set forth in subsection (a) hereof, there is hereby established a special non-residential development and use which may be permitted in any use district.

(c) Petition: Permissive Use. The owner or owners of any tract of land in any use district or districts may petition Council for permission to use such land for less or more restrictive uses than are permitted under the existing zoning or conditionally permitted zoning on such land. Such permissive use shall, if granted, be subject to conditions, limitations and stipulations as are established by the Planning and Zoning Commission and Council. Such uses, if granted, shall be specifically limited to those specified in such permissive use.

(1) Criteria to be used. Such less or more restrictive uses shall be determined to be those based upon criteria used in determination of Zoning Districts and permitted uses hereunder of this Zoning Code.

(2) Restrictions. The uses permitted hereunder shall not be changed, modified, extended, or restricted after the granting thereof.

(d) Application. The procedures for making application and the criteria by which an application is evaluated are the same as those used for conditional uses under Sections 1189.02 and 1189.04 of this Zoning Code plus the following considerations:

The Planning and Zoning Commission and Council, in judging and weighing the merit of the proposal, shall consider and impose requirements for such development such as, but not limited to, those delineated herein:

- (1) Off-street parking needs, its location and arrangement, paving, exits, entrances, size and arrangement of individual parking spaces, aisles, car stops, bumpers.
- (2) Lighting of the area under consideration.
- (3) Signs as to their location, illumination, size, design, types.
- (4) The alleviation of problems which may adversely affect neighboring property by requiring fences, walls, gates, landscaping and other plantings.
- (5) Minor variation of building lines to accommodate the most effective use of the land for the requirement of surrounding open space as will effectively retain the character of the entire area.
- (6) Require adequate provision for drainage.
- (7) Approved building plans and designs as presented or alternates in keeping with the character of the neighborhood.
- (8) Such other considerations and improvements as the Planning and Zoning Commission and Council may deem desirable, necessary and reasonable to properly protect the interests of adjacent property owners and the public health, welfare and safety. By the mention of lighting, signs or other items, it is not intended that the Planning and Zoning Commission and Council are required to permit, consider, or approve such items if in their opinion such items as signs, lighting or other listed items are best omitted in the interest and for the protection of the neighborhood or general public.
- (9) Establish time limits for the performance of the requirements, improvements, and establish bond requirements to assure proper and timely development and fulfillment of imposed requirements.

(Ord. 89-1997. Passed 12-11-97.)

**1189.08 SUPPLEMENTARY CONDITIONS AND SAFEGUARDS.**

When considering any conditional use, the Planning and Zoning Commission may prescribe appropriate conditions and safeguards in conformity with this Code. Violations of such conditions and safeguards when made a part of the terms under which the conditional use is granted shall be deemed a violation of this Code.

(Ord. 89-1997. Passed 12-11-97.)

**1189.09 PUBLIC HEARING BY THE PLANNING AND ZONING COMMISSION.**

The Planning and Zoning Commission shall schedule a public hearing within thirty (30) days after the acceptance of the application. The hearing on the conditional use shall be held within thirty-five (35) days of the establishment of a public hearing by the Planning and Zoning Commission.



(Ord. 89-1997. Passed 12-11-97.)

**1189.10 NOTICE OF PUBLIC HEARING IN NEWSPAPER.**

Before holding the required public hearing, notice of such hearing shall be given by publication in a newspaper of general circulation in the City at least twenty (20) days prior to the hearing. The notice shall set forth the time and place of the public hearing and the nature of the proposed conditional use.

(Ord. 89-1997. Passed 12-11-97.)

**1189.11 NOTICE TO PARTIES OF INTEREST.**

Before holding the required public hearing, written notice of such hearing shall be mailed by first class mail at least fourteen (14) days before the date of the hearing to all property owners within five hundred (500) feet in any direction of the property upon which an application for a conditional use permit has been filed. The failure to mail or deliver notification as provided in this Code shall not invalidate any such application. The notice shall contain the same information as required of notices published in newspapers.

(Ord. 89-1997. Passed 12-11-97.)

**1189.12 NOTICE OF PUBLIC HEARING ON PROPERTY.**

At least ten (10) days before the public hearing, the Zoning Inspector shall have a sign posted, three by five feet in size, setting forth the size of the property, existing zoning, proposed use and date of the public hearing.

(Ord. 89-1997. Passed 12-11-97.)

**1189.13 APPEARANCE COMMISSION ACTION.**

The Appearance Commission shall review all landscaping on applications that have been properly submitted and recommend an action to the Planning and Zoning Commission not less than five days prior to the first scheduled meeting of the Planning and Zoning Commission.

(Ord. 89-1997. Passed 12-11-97.)

**1189.14 PLANNING AND ZONING COMMISSION ACTION.**

The Planning and Zoning Commission shall consider all applications that have been properly submitted to it and recommend an action to Council within sixty-five (65) days of such item's first appearance on it's agenda. The recommendation shall be based upon the standards of Sections 1189.03 and 1189.04 and other pertinent sections herein.

(Ord. 89-1997. Passed 12-11-97.)

**1189.15 COUNCIL ACTION.**

(a) Council, within sixty-five (65) days of it's receipt of the recommendation of the Planning and Zoning Commission shall approve, deny, modify, or approve with conditions.

(b) If Council action is in accordance with the recommendation of the Planning and Zoning Commission, a majority vote of Council is needed for enactment.

(c) If Council substantially departs from, substantially alters, or differs from the recommendation of the Planning and Zoning Commission, no such ordinance, measure or resolution shall take effect unless approved and passed by three-fourths vote of the membership of the Council.

(Ord. 89-1997. Passed 12-11-97.)

**1189.16 ISSUANCE AND REVOCATION OF CERTIFICATES.**

Only upon a recommendation by the Planning and Zoning Commission and conclusion of hearing procedures relative to a particular application may Council issue a conditional zoning certificate. The breach of any condition, safeguard, or requirement shall automatically invalidate the certificate granted, and shall constitute a violation of the Zoning Ordinance.

(Ord. 89-1997. Passed 12-11-97.)

**1189.17 REAPPLICATION.**

No application for a conditional use permit, which has been denied wholly or in part by Council, shall be resubmitted until the expiration of one year or more from the date of such denial, except on grounds of newly discovered evidence or proof of changed conditions which would be sufficient to justify reconsideration.

(Ord. 89-1997. Passed 12-11-97.)

**1189.18 APPEALS.**

Appeals from the Planning and Zoning Commission for conditional uses shall be made to the Board of Zoning Appeals.

(Ord. 89-1997. Passed 12-11-97.)

**1189.19 EXPIRATION OF CONDITIONAL USE PERMIT.**

A conditional use permit shall be deemed to authorize only one particular conditional use and such conditional permit shall automatically expire if, for any reason, construction of such conditional use has not begun within twelve (12) months or the conditional use has ceased by discontinuance or abandonment for a period of more than twelve (12) months unless an extension is approved by Council, by the recommendation of the Planning and Zoning Commission, for good cause shown. Discontinuance or abandonment shall mean that the structure has remained vacant, unoccupied, unused or has ceased the daily activities or operations which had previously occurred.

(Ord. 89-1997. Passed 12-11-97.)

**CHAPTER 1190**

**Riparian Setbacks**

**1190.01 Purpose.**

**1190.02 Compliance and violations.**

**1190.03 Conflicts with other regulations and severability.**

**1190.04 Definitions.**

**1190.05 Establishment of a riparian setback.**

**1190.06 Uses permitted.**

- 1190.07 Uses prohibited.**
- 1190.08 Nonconforming structures or uses.**
- 1190.09 Boundary interpretation and appeals procedure.**
- 1190.10 Variances within riparian setback.**
- 1190.11 Inspection.**

#### **1190.01 PURPOSE.**

(a) The City of Tallmadge has determined that the system of streams within the City contributes to the health, safety, and general welfare of the residents of the City. The purpose of this chapter is to protect and preserve the water quality within streams of the City and to protect residents of the City from property loss and damage because of flooding and other impacts of the stream. The City will implement this chapter by controlling uses and developments within a riparian setback that would impair the ability of the riparian area to:

- (1) Reduce flood impacts by absorbing peak flows, slowing the velocity of flood waters and regulating base flow.
- (2) Stabilize the banks of streams to reduce bank erosion and the downstream transport of sediments eroded from stream banks.
- (3) Reduce pollutants in streams during periods of high flows by filtering, settling, and transforming pollutants already present in streams or in runoff before they enter streams.
- (4) Provide areas for natural meandering and lateral movement of stream channels.
- (5) Reduce the presence of aquatic nuisance species to maintain diverse and connected riparian vegetation.
- (6) Provide high quality stream habitats with shade and food to a wide array of wildlife by maintaining diverse and connected riparian vegetation.
- (7) Benefit the City economically by minimizing encroachment on stream channels and reducing the need for costly engineering solutions such as dams and riprap, to protect structures and reduce property damage and threats to the safety of watershed residents, and by contributing to the scenic beauty and to the environment of the City, the quality of life of the residents of the City, and corresponding property values.

(b) This chapter has been enacted to protect these services of riparian areas by providing reasonable controls governing structures and uses in riparian setbacks.

(Ord. 25-2006. Passed 8-10-06.)

#### **1190.02 COMPLIANCE AND VIOLATIONS.**

(a) No preliminary plan or zoning approvals shall be issued by the City without full compliance with the terms of these regulations where applicable.

(b) Any person or organization who violates this Chapter shall be guilty of a minor misdemeanor and, upon conviction, shall be subject to punishment as provided in Chapter 1199 of the Codified Ordinances of the City, and shall be required to restore the riparian setback through a plan approved by the appropriate Soil and Water Conservation District (SWCD).

(c) The imposition of any other penalties provided herein shall not preclude the City from instituting an appropriate action or proceeding in a Court of proper jurisdiction to prevent an unlawful development, or to restrain, correct, or abate a violation, or to require compliance with the provisions of this Chapter or other applicable laws, ordinances, rules, or regulations, or the orders of the City.

(Ord. 25-2006. Passed 8-10-06.)

#### **1190.03 CONFLICTS WITH OTHER REGULATIONS AND SEVERABILITY.**

(a) Where this chapter imposes a greater restriction upon land than is imposed or required by any other provision of law, regulation, contract, or deed, the provisions of this chapter shall control.

(b) These regulations shall not limit or restrict the application of other provisions of law, regulation, contract, or deed, or the legal remedies available thereunder, except as provided in division (a) of this section.

(c) If any clause, section, or provision of these regulations is declared invalid or unconstitutional by a court of competent jurisdiction, validity of the remainder shall not be affected. (Ord. 25-2006. Passed 8-10-06.)

#### **1190.04 DEFINITIONS.**

For the purpose of this, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (a) "Best management practices (BMPs)." Conservation practices or protection measures which reduce impacts from a particular land use. Best Management Practices for construction are outlined in "Rainwater and Land Development, Ohio's Standard for Storm Water Management, Land Development, and Urban Stream Protection" prepared by the Ohio Department of Natural Resources.
- (b) "Damaged or diseased trees." Trees that have split trunk, broken tops, heart rot, insect or fungus problems that will lead to imminent death, undercut root systems that put the tree in imminent danger of falling, lean as a result of root failure that puts the tree in imminent danger of falling, or any other condition that puts the tree in imminent danger of being uprooted or falling into or along a stream or onto a structure.
- (c) "Defined channel." A natural or man-made depression in the terrain which is maintained and altered by the water and sediment it carries.
- (d) "Federal Emergency Management Agency (FEMA)." The agency with overall responsibility for administering the National Flood Insurance Program.
- (e) "Final plat." A final tracing of all or a phase of a subdivision, a planned residential development, or other land development and its complete survey information.
- (f) "Impervious cover." Any surface that cannot effectively absorb or infiltrate water. This may include roads, streets, parking lots, rooftops, sidewalks and other areas not covered by vegetation.
- (g) "Natural succession." A gradual and continuous replacement of one kind of plant and animal group by a more complex group. The plants and animals present in the initial group modify the environment through their life activities, thereby making it unfavorable for themselves. They are gradually replaced by a different group of plants and animals better adapted to the new environment.
- (h) "Noxious weed." Any plant defined as "Prohibited Noxious Weeds" in Section 901:5-37-01 of the Ohio Administrative Code and any of the following: Goldenrod, Poison Hemlock, Poison Ivy, Poison Oak, Ragweed, Stinging Nettle, and other plants capable of causing skin reactions upon contact or producing severe allergic respiratory reactions.
- (i) "Ohio Rapid Assessment Method." A multi-parameter qualitative index established by the Ohio Environmental Protection Agency to evaluate wetland quality and function.
- (j) "100-year floodplain." Any land susceptible to being inundated by water from a base flood, which is the flood that has a 1% or greater chance of being equaled or exceeded in any given year. For the purposes of these regulations, the 100-year floodplain shall be defined by FEMA and subject to review and approval by the City Engineer.
- (k) "Ordinary high water mark." The point of the bank or shore to which the presence and action of surface water is so continuous as to leave a district marked by erosion, destruction or prevention of woody terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristic. The ordinary high water mark defines the channel of a stream.
- (l) "Pollution." Any contamination or alteration of the physical, chemical, or biological properties of any waters that will render the

waters harmful or detrimental to: public health, safety or welfare; domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; livestock, wildlife, including birds, fish or other aquatic life.

- (1) "Point source pollution" is traceable to a discrete point or pipe.
  - (2) "Non-point source pollution" is generated by various land use activities rather than from an identifiable or discrete source, and is conveyed to waterways through natural processes, such as rainfall, storm runoff or ground water seepage rather than direct discharge.
  - (m) "Preliminary plan." A drawing of a major subdivision, planned residential development, or other land development for the purpose of study and which, if approved, permits proceeding with the preparation of the final plat.
  - (n) "Riparian area." A transitional area between flowing water and terrestrial ecosystems which provides a continuous exchange of nutrients and woody debris between land and water. This area is at least periodically influenced by flooding. Riparian areas, if appropriately sized and managed, help to stabilize banks, limit erosion, reduce flood size flows and/or filter and settle out runoff pollutants, or perform other functions consistent with the purposes of these regulations.
  - (o) "Riparian setback." The area set back from each bank of a stream to protect the riparian area and stream from impacts of development, and streamside residents from impacts of flooding and land loss through erosion. "Riparian setbacks" are those lands within the city that fall within the area defined by the criteria set forth in these regulations.
  - (p) "Soil and Water Conservation District (SWCD)." An entity organized under Ohio R.C. Chapter 1515 referring to either the Soil and Water Conservation District Board or its designated employees, hereinafter referred to as the SWCD.
  - (q) "Soil-disturbing activity." Clearing, grading, excavating, filling or other alteration of the earth's surface where natural or human-made ground cover is destroyed, and which may result in, or contribute to, erosion and sediment pollution.
  - (r) "Stream." A surface watercourse with a well-defined bed and bank, either natural or artificial, which confines and conducts continuous or periodic flowing water in such a way that terrestrial vegetation cannot establish roots within the channel.
  - (s) "Storm Water Pollution Prevention Plan (SWPPP)." The plan which describes all the elements of the storm water strategy implemented during and after construction. The plan addresses erosion control and storm water quality.
  - (t) "Storm water quality treatment." The removal of pollutants from urban runoff and improvement of water quality, accomplished largely by deposition and utilizing the benefits of natural processes.
  - (u) "Variance." A modification of the enforcement of this chapter which will not be contrary to the public interest and where, due to conditions peculiar to this property and not the result of the action of the applicant, a literal enforcement of this chapter would result in undue hardship to the applicant.
  - (v) "Watercourse." A natural or artificial waterway, such as a stream or river, with a defined bed and channel and a definite direction of course that is contained within, flows through or borders the community.
  - (w) "Watershed." An area of land that drains into a particular watercourse, usually defined by topography.
  - (x) "Wetlands." Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.
- (Ord. 25-2006. Passed 8-10-06.)

#### 1190.05 ESTABLISHMENT OF A RIPARIAN SETBACK.

- (a) Riparian setbacks are established as provided in this chapter.
- (b) Streams addressed by this chapter are those which meet the definition of "stream" in Section 1190.04 and are indicated on at least one of the following maps:
  - (1) USGS topographical map.
  - (2) Applicable County Riparian Setback Map.
  - (3) Soils maps located in the Soil Survey for, as applicable, Summit or Portage County, Ohio, USDA, NRCS.
  - (4) City of Tallmadge Riparian Setback Map is on file in the Zoning Department.
- (c) Widths of setbacks are measured as horizontal map distance outward from the ordinary high water mark on each side of a stream, and are established as follows:
  - (1) A minimum of 300 feet on each side of all streams draining an area greater than 300 square miles.
  - (2) A minimum of 100 feet on each side of all streams draining an area greater than 20 square miles and up to 300 square miles.
  - (3) A minimum of 75 feet on each side of all streams draining an area greater than 0.5 square mile (320 acres) and up to 20 square miles.
  - (4) A minimum of 50 feet on each side of all streams draining an area greater than 0.05 square mile (32 acres) and up to 0.5 square mile (320 acres).
  - (5) A minimum of 30 feet on each side of all streams draining an area less than 0.05 square mile (32 acres).
- (d) The following are exempt from the terms and protection of this chapter: grassy swales, roadside ditches, drainage ditches created at the time of a subdivision to convey storm water to another system, tile drainage systems, and stream culverts.
- (e) The following shall apply to the riparian setback:
  - (1) Where the 100-year floodplain is wider than the riparian setback on either or both sides of the stream, the riparian setback shall be extended to the outer edge of the 100-year floodplain. The 100-year floodplain shall be defined by FEMA and subject to review and approval by the City Engineer.
  - (2) A. Because the gradient of the riparian corridor significantly influences impacts on the stream, the following adjustment for steep slopes will be integrated into the riparian setback formulae for width determination:

#### Average Percent Slope

#### Width of Setback

|            |              |
|------------|--------------|
| 15% to 20% | Add 25 feet  |
| 21% to 25% | Add 50 feet  |
| >25%       | Add 100 feet |

- B. Average stream bank slope is to be calculated using methodology outlined in "The Ohio Supplement to Urban Hydrology for Small Watersheds, Technical Release Number 55 (TR-55)" by USDA, NRCS.
- (3) Where wetlands protected under Federal or State law are identified within the riparian setback, the riparian setback shall consist of the full extent of the wetlands plus the following additional setback widths:
  - A. A 50-foot setback extending beyond the outer boundary of a Category 3 wetlands.
  - B. A 30-foot setback extending beyond the outer boundary of a Category 2 wetlands.
  - C. No additional setback will be required adjacent to Category 1 wetlands
- (4) Wetlands shall be delineated by a qualified professional under guidelines established by the U.S. Army Corps of Engineers and Ohio Environmental Protection Agency and the delineation approved by the appropriate agencies. All wetland delineations shall also include the latest version of the Ohio Rapid Assessment Method for wetland evaluation approved at the time of application of these regulations.
- (5) The applicant shall be responsible for delineating the riparian setback, including any expansions or modifications as required by subsections (b) through (d) hereof, and identifying this setback on all subdivisions, land development plans, and/or building permit applications. This delineation shall be done at the time of application of the preliminary

plans, or all plans that are required, or at the time of submission of any permit applications. This delineation shall be subject to review and approval by the applicable SWCD. As the result of this review, the SWCD may require further studies from the applicant.

- (6) Prior to any soil-disturbing activity, the riparian setback shall be clearly delineated with construction fencing or other suitable material by the applicant on site, and such delineation shall be maintained throughout soil-disturbing activities. The delineated area shall be maintained in an undisturbed state unless otherwise permitted by these regulations. All fencing shall be removed when a development project is completed.
- (7) No approvals or permits shall be issued by the City prior to delineation of the riparian setback in conformance with these regulations.
- (8) Upon completion of an approved subdivision, planned residential development, or other land development, the riparian setback shall be permanently recorded on the plat records for the City.  
(Ord. 25-2006. Passed 8-10-06.)

#### **1190.06 USES PERMITTED.**

- (a) The following uses are permitted by right within the riparian setbacks without prior approval:
  - (1) Open space uses. Open space uses that are passive in character shall be permitted in the riparian setback, including but not limited to those listed in divisions (a)(2) through (4) of this section. No use permitted under these regulations shall be construed as allowing trespass on privately-held lands. Alteration of this natural area is strictly limited. Except as otherwise provided in these regulations, the riparian setback shall be preserved in its natural state.
  - (2) Recreational activity. Passive recreational uses, as permitted by Federal, State, and local laws, such as hiking, non-motorized bicycling, fishing, hunting, picnicking and similar uses and associated structures, including boardwalks, pathways constructed of pervious material, picnic tables, and wildlife viewing areas.
  - (3) Removal of damaged or diseased trees. Damaged or diseased trees may be removed. Because of the potential for felled logs and branches to damage downstream properties and/or block ditches or otherwise exacerbate flooding, logs and branches resulting from the removal of damaged or diseased trees that are greater than 6 inches in diameter shall be anchored to the shore or removed from the 100-year floodplain.
  - (4) Revegetation and/or reforestation. The revegetation and/or reforestation of the riparian setback shall be allowed without approval of the appropriate SWCD. Species of shrubs and vines recommended for stabilizing flood-prone areas along streams within the City are listed in the Appendix.
- (b) The following uses are permitted by right within the riparian setbacks with prior approval of the design.
  - (1) Stream bank stabilization/erosion control measures. Best management practices (BMPs) for stream bank stabilization or erosion control may be allowed if such practices are within permitted uses by the local, State and Federal government regulations and are ecologically compatible and emphasize the use of natural materials and native plant species where practical and available. Such stream bank stabilization/erosion control practices shall only be undertaken upon approval of a Storm Water Pollution Prevention Plan (SWPPP or SW3P) by the SWCD.
  - (2) Crossings. In reviewing plans for stream crossings, the City may confer with the SWCD, the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the County Engineer; the Department of Environmental Services of the County; the County Health Department or other technical experts as necessary.
    - A. Limited crossings of designated streams through the riparian setback by vehicles, storm sewers, sewer and/or water lines and public utility lines will be per the approval of local, County, and State governing agencies and as a part of the regular zoning review process.
    - B. One driveway crossing per stream per tax parcel will be allowed for individual landowners.
    - C. Roadway crossings for major and minor subdivisions, open space subdivisions, or any other non-single family residential use shall be designed and constructed per the City's design standards and as approved by the City Planning and Zoning Commission. If more than two crossings per 1,000 linear feet of stream center are required for these areas, the applicant must apply for a variance.
    - D. All roadway crossings shall be perpendicular to the stream flow and shall minimize disturbance to the riparian setback and shall mitigate any necessary disturbances.
  - (3) Placement of storm water retention or detention facilities may be considered within the riparian setback if:
    - A. Storm water quality treatment that is consistent with current State standards is incorporated into the basin.
    - B. The storm water quality treatment basin is located at least 50 feet from the ordinary high water mark of the stream.
  - (4) Dredging may be permitted, provided the City or property owner obtains all necessary permits that may be required, and notification and presentation of the plan are provided to the City Engineer for review and approval.  
(Ord. 25-2006. Passed 8-10-06.)

#### **1190.07 USES PROHIBITED.**

The following uses are specifically prohibited within the riparian setback:

- (a) Construction. There shall be no structures of any kind, except as permitted under these regulations.
- (b) Dredging or Dumping. There shall be no drilling for petroleum or mineral products, mining activity, filling or dredging of soil, spoils, or any material (natural or man-made) except as permitted under these regulations.
- (c) Roads or Driveways. There shall be no roads or driveways, except as permitted under these regulations.
- (d) Motorized Vehicles. There shall be no use of motorized vehicles of any kind, except as permitted under these regulations.
- (e) Modification of Natural Vegetation. Modification of the natural vegetation shall be limited to conservation maintenance that the landowner deems necessary to control noxious weeds; for such plantings as are consistent with these regulations; for such disturbances as are approved under these regulations; and for the passive enjoyment, access and maintenance of landscaping or lawns existing at the time of passage of these regulations. Nothing in this section shall be construed as requiring a landowner to plant or undertake any other activities in the riparian setback, provided the landowner allows for natural succession.
- (f) Parking Lots. There shall be no parking lots or other human made impervious cover, except as permitted under these regulations.
- (g) New Surface and/or Subsurface Sewage Disposal or Treatment Area. Riparian setbacks shall not be used for the disposal or treatment of sewage except for:
  - (1) Undeveloped parcels that have received site evaluation approval and/or permit approval prior to the enactment of this chapter.
  - (2) Dwellings served by disposal/treatment systems existing at the time of passage of these regulations when such systems are properly sited (approved site evaluation) and permitted or in accordance with the County Health Department and/or the Ohio Environmental Protection Agency. Existing failing systems which are located within the riparian setback can be upgraded with approval of the County Health Department and/or the Ohio Environmental Protection Agency.
  - (3) Sanitary sewer systems, either public or private, that may need to be sited along riparian corridors to provide for flows and are commensurate with an approved sanitary system approved by the Ohio Environmental Protection Agency. (Ord. 26-2006. Passed 8-10-06.)

**1190.08 NONCONFORMING STRUCTURES OR USES.**

- (a) Structures and uses within the riparian setback, existing at the time of passage of these regulations, that are not permitted under these regulations may be continued but shall not be expanded except as set forth in this chapter.
- (b) If damaged or destroyed, these structures or uses may be repaired or restored in accordance with existing zoning regulations within two years from the date of damage/destruction or the adoption of these regulations, whichever is later, at the property owners' own risk.
- (c) A residential structure or use within the riparian setback existing at the time of passage of these regulations may be expanded subject to the following provisions:
  - (1) The expansion conforms to existing zoning regulations.
  - (2) The expansion must not impact the stream channel or the 100-year floodplain.
  - (3) The expansion must not exceed an area of fifteen percent (15%) of the total footprint of existing structure or use that lies within the riparian setback. Expansions exceeding fifteen percent (15%) of the total footprint within the riparian setback must be obtained through the variance process.
- (d) Nonresidential structure or use expansions will be permitted only through the variance process.

(Ord. 25-2006. Passed 8-10-06.)

**1190.09 BOUNDARY INTERPRETATION AND APPEALS PROCEDURE.**

- (a) When an applicant disputes the boundary of the riparian setback or the ordinary high water mark of a stream, the applicant shall submit evidence to the Building and Zoning Department and applicable SWCD that describes the boundary, presents the applicant's proposed boundary, and presents all justification for the proposed boundary change.
  - (b) The City Engineer and applicable SWCD shall evaluate all materials submitted and shall make a written recommendation to the Planning and Zoning Commission within a reasonable period of time, not to exceed sixty days. A copy of this recommendation shall be submitted to the applicant. If during this evaluation the City or SWCD requires further information to complete this evaluation, the applicant may be required to provide additional information.
  - (c) The Planning and Zoning Commission shall decide such boundary disputes. The party contesting the location of the riparian setback or the ordinary high water mark of the streams as determined by these regulations shall have the burden of proof in case of any such appeal.
- (Ord. 26-2006. Passed 8-10-06.)

**1190.10 VARIANCES WITHIN RIPARIAN SETBACK.**

- (a) Applications for a hearing before the Planning and Zoning Commission for variances to the provisions of this chapter shall be submitted to the Building and Zoning Department.
  - (b) The Planning and Zoning Commission may consult with representatives from the applicable SWCD; the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the County Engineer; the applicable Department of Environmental Services of the County; the County Health Department; or other technical experts as necessary to provide the necessary data for the Planning and Zoning Commission to consider variance requests.
  - (c) Expansions of residential structures or uses exceeding fifteen percent (15%) of the footprint area and expansions of all nonresidential structures or uses are subject to the following:
    - (1) The expansion conforms to the existing zoning regulations.
    - (2) The expansion must not impact the stream channel or the 100-year floodplain.
    - (3) The expansion of a nonresidential structure or use must not affect upstream or downstream hydrologic conditions which could cause damage from flooding or stream bank erosion to landowners in those areas. A hydrologic study must be completed by nonresidential applicants only as a process of the variance application.
    - (4) The expansion of a nonresidential structure or use will not exceed twenty- five percent (25%) of the footprint area. The twenty-five percent (25%) expansion limit is per the portion of the structure or use that lies within the riparian setback.
  - (d) Requests for variances for subdivisions or planned residential developments (PRD) will be considered for the following:
    - (1) An additional stream crossing or crossings for a subdivision, PRD, or open space development which is necessary for the health, welfare, and safety of the residents of the subdivision.
    - (2) A reduction of the setback width, not to exceed ten percent (10%) of the prescribed riparian setback width.
  - (e) No variances shall be granted for expansion of the following structures or uses:
    - (1) Facilities which use, store, distribute, or sell petroleum-based products or any hazardous materials. Such facilities include, but are not limited to asphalt plants, dry cleaners, gasoline service stations, and road maintenance facilities.
    - (2) Facilities which use, store, distribute, or sell products which may contribute higher than acceptable concentrations of dissolved or particulate matter to storm water runoff around the facility. Such facilities include, but are not limited to landfills or transfer stations, junk yards, recycling facilities, quarries and borrow pits, sand and gravel extraction operations and road salt storage barns.
  - (f) In reviewing whether to grant variances, the Planning and Zoning Commission shall consider the following:
    - (1) The extent to which the requested variance impairs the functions of the riparian area. This determination shall be based on sufficient technical and scientific evidence as provided by the applicant and the agencies listed in subsections (a) through (e) hereof.
    - (2) The soil type and natural vegetation of the parcel as well as the percentage of the parcel that is in the 100-year floodplain.
    - (3) The degree of hardship these regulations place on the applicant and the availability of alternatives to the proposed activity.
- (Ord. 26-2006. Passed 8-10-06.)

**1190.11 INSPECTION.**

- (a) The riparian setback shall be inspected by the applicable SWCD:
  - (1) When a preliminary subdivision plat or other land development plan is submitted to the City.
  - (2) When a building or zoning permit is requested.
  - (3) Prior to any soil-disturbing activity to inspect the delineation of the riparian setback as required under these regulations.
- (b) The riparian setback shall also be inspected annually or as time permits by the SWCD or approved monitoring entity for compliance with any approvals under these regulations or at any time evidence is brought to the attention of the SWCD that uses or structures are occurring that may reasonably be expected to violate the provisions of these regulations.
- (c) Violations of these regulations will be handled as noted in Section 1190.02.

**APPENDIX: WOODY PLANTS SUITABLE FOR RIPARIAN AREAS**

| <i>Flood Tolerance*</i>      | <i>Shade Tolerance **</i> | <b>Common Name</b> |
|------------------------------|---------------------------|--------------------|
| <b>High Flood Tolerance*</b> |                           |                    |

|                              |   |                         |
|------------------------------|---|-------------------------|
| Aronia arbutifolia           | 3 | Red chokeberry          |
| Aronia melanocarpa           | 3 | Black chokeberry        |
| Cephalanthus occidentalis    | 5 | Common buttonbush       |
| Clethra alnifolia            | 2 | Summersweet clethra *** |
| Cornus amomum                | 4 | Silky dogwood           |
| Cornus stolonifera (sericea) | 5 | Redosier dogwood        |
| Hamamelis vernalis           | 3 | Vernal witchhazel ***   |
| Ilex decidua                 | 3 | Possumhaw ***           |
| Ilex glabra                  | 2 | Inkberry ***            |
| Ilex verticillata            | 3 | Common winterberry      |
| Itea virginica               | 1 | Virginia sweetspire *** |
| Magnolia virginiana          | 2 | Sweetbay magnolia ***   |
| Myrica pensylvanica          | 4 | Northern bayberry       |
| Physocarpus opulifolius      | 4 | Common ninebark         |
| Potentilla fruticosa         | 4 | Bush cinquefoil         |
| Sambucus canadensis          | 1 | American elderberry     |
| Salix x cotteti              | 5 | Bankers willow ***      |
| Salix exigua                 | 5 | Sandbar willow          |
| Salix purpurea               | 5 | Streamco willow ***     |

|                                  |                           |                         |
|----------------------------------|---------------------------|-------------------------|
| Viburnum cassinoides             | 2                         | Witherod viburnum       |
| Parthenocissus quinquefolia      | 1                         | Virginia creeper (vine) |
| <b>Moderate Flood Tolerance*</b> |                           |                         |
| Calycanthus floridus             | 1                         | Common sweetshrub       |
| Hypericum kalmianum              | 5                         | Kalm St. John's wort    |
| Viburnum dentatum                | 2                         | Arrowwood viburnum      |
| Xanthorhiza simplicissima        | 1                         | Yellowroot ***          |
| <b>Flood Tolerance*</b>          | <b>Shade Tolerance **</b> | <b>Common Name</b>      |

|                                      |                           |                           |
|--------------------------------------|---------------------------|---------------------------|
| <b>Intermediate Flood Tolerance*</b> |                           |                           |
| Aesculus parviflora                  | 2                         | Bottlebush buckeye ***    |
| Aesculus pavia                       | 2                         | Red buckeye ***           |
| Cornus racemosa                      | 2                         | Gray dogwood              |
| Lindera benzoin                      | 1                         | Common spicebush          |
| Rosa setigera                        | 4                         | Prairie rose              |
| Campsis radicans                     | 3                         | Trumpetcreeper (vine)     |
| Lonicera dioica                      | 2                         | Limber honeysuckle (vine) |
| Corylus americana                    | 2                         | American filbert          |
| Diervilla lonicera                   | 1                         | Dwarf bushhoneysuckle     |
| Fothergilla gardenii                 | 1                         | Dwarf fothergilla ***     |
| Fothergilla major                    | 1                         | Large fothergilla ***     |
| Hydrangea arborescens                | 1                         | Smooth hydrangea          |
| Hydrangea quercifolia                | 1                         | Oakleaf hydrangea ***     |
| Mahonia aquifolium                   | 1                         | Oregongrape holly ***     |
| Rosa carolina                        | 4                         | Carolina rose             |
| Rubus odoratus                       | 1                         | Fragrant thimbleberry     |
| Vaccinium stamineum                  | 2                         | Common deerberry          |
| <b>Flood Tolerance*</b>              | <b>Shade Tolerance **</b> | <b>Common Name</b>        |

|                             |   |                       |
|-----------------------------|---|-----------------------|
| <b>Low Flood Tolerance*</b> |   |                       |
| Arctostaphylos uva-ursi     | 4 | Bearberry             |
| Cornus rogersiana           | 1 | Roundleaf dogwood     |
| Corylus americana           | 2 | American filbert      |
| Diervilla lonicera          | 1 | Dwarf bushhoneysuckle |

|                       |   |                       |
|-----------------------|---|-----------------------|
| Fothergilla gardeni   | 1 | Dwarf fothergilla *** |
| Fothergilla major     | 1 | Large fothergilla *** |
| Hydrangea arborescens | 1 | Smooth hydrangea      |
| Hydrangea quercifolia | 1 | Oakleaf hydrangea *** |
| Mahonia aquifolium    | 1 | Oregongrape holly *** |
| Rosa carolina         | 4 | Carolina rose         |
| Rubus odoratus        | 1 | Fragrant thimbleberry |
| Symphoricarpos albus  | 1 | Common snowberry      |
| Vaccinium stamineum   | 2 | Common deerberry      |

| <i>Flood Tolerance*</i>        | <i>Shade Tolerance **</i>  | <b>Common Name</b>     |
|--------------------------------|--|------------------------|
| <b>No Flood Tolerance*</b>     |  |                        |
| Amorpha canescens              | 5  | Leadplant ***          |
| Ceanothus americanus           | 3  | New Jersey tea         |
| Comptonia peregrina            | 2  | Sweetfern              |
| Dirca palustris                | 1  | Leatherwood            |
| Hypericum frondosum            | 5  | Golden St. John's wort |
| Juniperus communis             | 5  | Common juniper         |
| Juniperus horizontalis         | 5  | Creeping juniper ***   |
| Rhus aromatica                 | 5  | Fragrant sumac         |
| Sambucus pubens                | 1  | Scarlet elder          |
| Symphoricarpos albus           | 1  | Common snowberry       |
| *High Flood Tolerance:         | Generally lowland wet species surviving when flooded or exposed to high water table more than 40% of the growing season.   |                        |
| *Moderate Flood Tolerance:     | Generally lowland wet species surviving when flooded or exposed to high water table more than 30% of the growing season but less than 40%.   |                        |
| *Intermediate Flood Tolerance: | Generally lowland wet-mesic species surviving occasional inundation or elevated water table between 20% and 30% of the growing season.   |                        |
| *Low Flood Tolerance:          | Generally upland mesic and mesic-dry species rarely inundated or exposed to an elevated water table for periods of short duration, between 5% and 20% of the growing season.   |                        |
| *No Flood Tolerance:           | Generally upland dry species exhibiting immediate and rapid decline frequently culminating in death if inundated or exposed to elevated water table for more than 5% of the growing season.                                    |                        |
| **Shade Tolerance:             | Shade tolerance means able to grow in a state of health and vigor beneath dense shade. In this ranking, shrubs and vines are ranked on a scale of 1 to 5, with 1 being very shade tolerant, and 5 being very shade intolerant. |                        |

Notes:

1. The majority of plants listed are available on the local commercial market and do not displace native species.
2. The cultivated varieties ("cultivars") of the species listed above may also be used.
3. Primary information taken from Hightshoe, Gary, 1987. Native Trees, Shrubs, and vines for Urban and Rural America. Van Nostrand. NY, NY.
4. For further assistance contact Roger Gettig, Landscape Consulting Program, The Holden Arboretum, or Steve Roloson, ODNR Scenic Rivers Program.

(Ord. 25-2006. Passed 8-10-06.)

**CHAPTER 1191**

**Supplemental Regulations**

- 1191.01 Permitted uses.**
- 1191.02 Permitted area, height, number of families and yard.**
- 1191.03 Permitted height exceptions.**
- 1191.04 Front yard variances in residential districts.**
- 1191.05 Conditions and safeguards.**
- 1191.06 Building permit or zoning certificate.**

- 1191.07 Transition areas.**
- 1191.08 Essential services.**
- 1191.09 Construction.**
- 1191.10 Principal building.**
- 1191.11 Substandard lots.**
- 1191.12 Corner lots.**
- 1191.13 Lots, yards and open space.**
- 1191.14 Visibility. (Repealed)**
- 1191.15 Dwelling other than main structure.**
- 1191.16 Accessory building.**
- 1191.17 Accessory buildings, structures and uses; yard exceptions.**
- 1191.18 Approval of plats.**
- 1191.19 Prohibited uses.**
- 1191.20 Parking of trucks and commercial vehicles.**
- 1191.21 Home occupations.**
- 1191.22 Portable storage units.**

#### CROSS REFERENCES

Zoning applies to housing projects - see Ohio R.C. 3735.44

Airport zoning - see Ohio R.C. Ch. 4563

Referral of zoning permit applications to Director of Transportation - see Ohio R.C. 5511.01

#### **1191.01 PERMITTED USES.**

No building shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used, designed or arranged for any purpose other than is permitted in the district in which the building or land is located or as specified in this Chapter.  
(Ord. 89-1997. Passed 12-11-97.)

#### **1191.02 PERMITTED AREA, HEIGHT, NUMBER OF FAMILIES, AND YARD.**

No building shall be erected, converted, enlarged, reconstructed or structurally altered except in conformity with the area, height, number of families, and yard regulations of the district in which the building is located unless otherwise specifically stated in this Zoning Code.  
(Ord. 89-1997. Passed 12-11-97.)

#### **1191.03 PERMITTED HEIGHT EXCEPTIONS.**

Except as specifically stated in other parts of this Zoning Code, no building or structure shall be erected, converted, enlarged, reconstructed or structurally altered to exceed the height limit hereinafter established for the district in which the building is located, except that penthouse or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, and fire or parapet walls, skylights, towers, steeples, stage lofts and screens, flagpoles, satellite signal receiving devices, water tanks or similar structures may be erected above the height limits herein. No such structure may be erected to exceed by more than fifteen feet the height limits of the district in which it is located; nor shall such structure have a total area greater than twenty-five percent (25%) of the roof area of the building; nor shall such structure be used for any residential purpose other than a use incidental to the main use of the building. Wireless radio aerials or masts may be erected to any height.  
(Ord. 89-1997. Passed 12-11-97.)

#### **1191.04 FRONT YARD VARIANCES IN RESIDENTIAL DISTRICTS.**

In any R-District where the average depth of at least two existing front yards on lots within 100 feet of the lot in question is less than the minimum front yard depth prescribed elsewhere in this Zoning Code, the required minimum front yard depth on such lot shall be modified. In such case, the required depth shall not be less than the average depth of such existing front yards, provided, however, that the depth of the front yard on any lot shall be at least twenty-five feet.  
(Ord. 89-1997. Passed 12-11-97.)

#### **1191.05 CONDITIONS AND SAFEGUARDS.**

The Planning and Zoning Commission shall have the power to impose conditions to safeguard the intent and objectives of the Zoning Code.  
(Ord. 89-1997. Passed 12-11-97.)

#### **1191.06 BUILDING PERMIT OR ZONING CERTIFICATE.**

No Building Permit or Zoning Certificate shall be issued without evidence that the responsible Health Authority has approved the proposed sanitary sewage disposal facilities for the use for which the building permit or zoning certificate has been requested. Where central sanitary sewerage facilities are not available, the minimum lot size shall be one acre for single family dwellings and one and one-half acres for two-family or three-family dwellings, where permitted, unless a larger area is required by the responsible Health Authority.  
(Ord. 89-1997. Passed 12-11-97.)

#### **1191.07 TRANSITION AREAS.**

To secure the optimum effect of transition from a residential to a non-residential district, the Planning and Zoning Commission shall have the power to determine the need for and amount of planting materials, walls or fences, or any combination of these on any property line of land under consideration. The plans and specifications including density and height figures for the overall site development shall include the proposed arrangement of such plantings and structures.  
(Ord. 89-1997. Passed 12-11-97.)

#### **1191.08 ESSENTIAL SERVICES.**



Essential services shall be permitted as authorized under any franchise or that may be regulated by any law of the State of Ohio, it being the intention hereof to exempt such essential services from the application of the Zoning Code.

(Ord. 89-1997. Passed 12-11-97.)

#### **1191.09 CONSTRUCTION.**

Nothing in the Zoning Code shall be deemed to require any change in the plans, construction or designated use of any building upon which actual construction was lawfully begun prior to the adoption of the Code and upon which building actual construction has been diligently carried on and provided further than such building shall be completed within two years from the date of passage of the Zoning Code.

(Ord. 89-1997. Passed 12-11-97.)

#### **1191.10 PRINCIPAL BUILDING.**

No more than one principal building shall be permitted on any lot in a Residential District unless otherwise specifically stated in the Zoning Code and every principal building shall be located on a lot having required frontage on a fully improved public street.

(Ord. 89-1997. Passed 12-11-97.)

#### **1191.11 SUBSTANDARD LOTS.**

(a) Any lot which was platted prior to the enactment of this Zoning Code which ownership was of record at the time of adoption of this Zoning Code that does not meet the requirements of the Zoning Code for yards, or other areas of open space may be utilized for uses permitted in the respective district, provided the necessary requirements for sanitary sewage facilities and water as established by the responsible Health Authority can be safely accommodated.

(b) Substandard lots shall utilize setbacks determined by the proportional application of the setback requirements (the difference between the existing lot area and the minimum lot area required in that district) specified in the respective district. However, those modified setbacks shall not be less than fifty percent (50%) of the minimum setback required in that district unless otherwise provided by this Code.

(Ord. 89-1997. Passed 12-11-97.)

#### **1191.12 CORNER LOTS.**

Corner lots in all districts are required to have the minimum front yard requirements, as indicated in that district, facing both streets.

(Ord. 89-1997. Passed 12-11-97.)

#### **1191.13 LOTS, YARDS AND OPEN SPACE.**

No space which, for the purpose of a building or dwelling group, has been counted or calculated as part of a side yard, rear yard, front yard or other open space required by this Zoning Code may, by reason of change in ownership or otherwise, be counted or calculated to satisfy the yard or other open space requirement of or for any other building.

(Ord. 89-1997. Passed 12-11-97.)

#### **1191.14 VISIBILITY. (REPEALED)**

(EDITOR'S NOTE: Former Section 1191.14 was repealed by Ordinance 61-2003, passed July 10, 2003.)

#### **1191.15 DWELLING OTHER THAN MAIN STRUCTURE.**

No residential structure shall be erected upon the rear of a lot or upon a lot with another dwelling.

(Ord. 89-1997. Passed 12-11-97.)

#### **1191.16 ACCESSORY BUILDING.**

An accessory building attached to the principal building, on a lot, shall be made structurally a part thereof, and shall comply in all respects with the requirements of this Zoning Code applicable to the principal building.

(Ord. 89-1997. Passed 12-11-97.)

#### **1191.17 ACCESSORY BUILDINGS, STRUCTURES AND USES; YARD EXCEPTIONS.**

In any district, off-street parking spaces, accessory buildings or structures, not exceeding two hundred (200) square feet and fifteen (15) feet in height, when located between the front of the main building and the rear lot line, may be placed five feet from the side and rear property lines.

(Ord. 89-1997. Passed 12-11-97.)

#### **1191.18 APPROVAL OF PLATS.**

No proposed plat of a new subdivision shall hereafter be approved unless the lots within such plat equal or exceed the minimum size and width requirements set forth in the various districts of this Zoning Code.

(Ord. 89-1997. Passed 12-11-97.)

#### **1191.19 PROHIBITED USES.**

No use shall be permitted or authorized to be established which, when conducted in compliance with the provisions of this Zoning Code and any additional conditions or requirements prescribed is or may become hazardous, noxious or offensive due to the emission of odor, dust, smoke, cinders, gas, fumes, noise, vibration, electrical interference, refuse matters, or water carried wastes.

(Ord. 89-1997. Passed 12-11-97.)

#### **1191.20 PARKING OF TRUCKS AND COMMERCIAL VEHICLES.**

(a) To protect the residential character of neighborhoods and to protect the public from the danger and nuisance of large commercial vehicles, the storage or parking of commercial vehicles exceeding ten thousand (10,000) pounds gross vehicle weight or twenty-five (25) feet in length, including but not limited to tractors, trailers, semi-trailers, and trucks is hereby classified as an industrial use and is prohibited in residential zones except for loading and unloading.

(b) A commercial vehicle shall be any motor vehicle or trailer whose primary function is to move property for business and industrial purpose.

(Ord. 89-1997. Passed 12-11-97.)

#### **1191.21 HOME OCCUPATIONS.**

Such uses shall be permitted subject to the following conditions:

- (a) Such use shall be conducted entirely within the dwelling unit.
- (b) Such use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes.
- (c) Such use shall be conducted only by persons residing in the dwelling unit.
- (d) The use shall not involve the use of more than one room in the building or the equivalent of twenty percent of the floor space of the main floor, whichever is greater. (Ord. 89-1997. Passed 12-11-97.)
- (e) One unlighted sign not more than two (2) square feet in area, attached to the dwelling announcing the name and home occupation shall be permitted.  
(Ord. 37-2005. Passed 5-12-05.)
- (f) Such use shall not create a nuisance by reason of noise, odor, dust, vibration, fumes, smoke, electrical interference or other causes.
- (g) No use of yard space, outside storage or parking of any business vehicles over ten thousand (10,000) pounds gross vehicle weight or twenty-five (25) feet in length is permitted.
- (h) There shall be no display nor stock in trade or commodities sold on the premises.
- (i) Parking is limited to the driveway area.  
(Ord. 89-1997. Passed 12-11-97.)

#### **1191.22 PORTABLE STORAGE UNITS.**

- (a) For purposes of this section, "portable storage unit" shall mean any container, storage unit, or like container made of metal or other durable construction material, designed for temporary storage of personal property and transported to the property and left on-site. Such unit is located outside an enclosed building and is not an approved accessory building or shed.
- (b) Portable storage units shall be located behind the minimum front yard setback line of the lot placed upon and shall also comply with all minimum side and rear yard setback regulations. The unit shall be placed on a driveway or on an improved hard surface on the owner's property.
- (c) Portable storage units are permitted as a temporary use for a period not to exceed sixty (60) days within any one year period.
- (d) If the portable storage unit is being used to store personal property as a result of a major calamity at the property (e.g., fire, flood, or other event where there is significant property damage), the time period may be extended by the Director of Public Service for good cause shown to a maximum of one hundred twenty (120) days within a one year period.
- (e) The placement of any portable storage unit shall be in such a manner as not to create a public nuisance nor obstruct nor hinder public or private traffic.  
(Ord. 82-2011. Passed 9-22-11.)

### **CHAPTER 1192**

#### **Management, Administration and Control of the Use of the City's Public Rights-of-Way**

- 1192.01 Finds and purpose.**
- 1192.02 Scope.**
- 1192.03 Definitions.**
- 1192.04 Rights-of-way administration.**
- 1192.05 Certificate of registration applications.**
- 1192.06 Compensation for certificate of registration.**
- 1192.07 Oversight and regulation.**
- 1192.08 Registration term.**
- 1192.09 Small cell facilities and wireless support structures.**
- 1192.10 Civil forfeitures.**
- 1192.11 Termination of certificate of registration.**
- 1192.12 Unauthorized use of public rights-of-way.**
- 1192.13 Assignment of transfer of ownership and renewal.**
- 1192.14 Construction permits.**
- 1192.15 Construction, relocation and restoration.**
- 1192.16 Enforcement of permit obligation.**
- 1192.17 Performance security.**
- 1192.18 Indemnification and liability.**
- 1192.19 General provisions.**
- 1192.20 Penalties.**

#### **1192.01 FINDINGS AND PURPOSE.**

- (a) The City of Tallmadge, Ohio (the "City") is concerned with the use of all Rights-of-Way in the City as such Rights-of-Way are valuable and limited resources.
- (b) Changes in the public utilities and communications industries have increased the demand and need for access to Rights-of-Way and placement of facilities and structures therein.
- (c) It is necessary to comprehensively plan and manage access to, and structures and facilities in, the Rights-of-Way and provide innovative and economic solutions to efficiently and economically utilize limited Rights-of-Way capacity.
- (d) The City has authority under the laws and Constitution of the State of Ohio, including, but not limited to Article 18, Sections 3, 4, and 7, to regulate the public and private entities which use the Right-of-Way.  
(Ord. 53-2018. Passed 6-20-18.)

#### **1192.02 SCOPE.**

The provisions of this chapter shall apply to all users of the Rights-of-Way as provided herein. (Ord. 53-2018. Passed 6-28-18.)

#### **1192.03 DEFINITIONS.**

- (a) For the purposes of this chapter, the following terms, words, phrases, and their derivations shall have the meanings set forth herein, regardless of whether or not the words and phrases are capitalized. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive.  
Words not defined shall be given their common and ordinary meaning.
- (1) "ABANDONED." The designation given to a Facility, except for a Small Cell Facility or Wireless Support Structure in the Right-of-Way, when its operations or use are discontinued for a period exceeding ninety (90) consecutive days or a total of one hundred eighty (180) days in any 365-day period, without notice of the discontinued operations or use given to the City by

the Provider and without the City's approval, and except for a period of discontinued operations or use that has been caused by acts of God. Small Cell Facilities or Wireless Support Structures shall be deemed Abandoned if the facilities or support structures are unused for a period of three hundred sixty-five (365) days without the Operator otherwise notifying the City and receiving the City's approval.

- (2) "AFFILIATE." Each Person who falls into one or more of the following categories: (i) each Person having, directly or indirectly, a controlling interest in a Provider, (ii) each Person in which a Provider has, directly or indirectly a controlling interest, (iii) each officer, director, general partner, limited partner or shareholder holding an interest of fifteen percent (15%) or more, joint venture or joint venture partner, of a Provider, and (iv) each Person, directly or indirectly, controlling, controlled by, or under common control with the Provider; provided that Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than fifteen percent (15%) of such Provider, or any creditor of such Provider solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Provider.
- (3) "ANTENNA." Communications equipment that transmits or receives radio frequency signals in the provision of wireless service.
- (4) "APPLICANT." Any Person who seeks to obtain a Certificate of Registration and/or a Permit.
- (5) "APPLICATION." The process by which an Applicant submits a request to obtain Certificate of Registration and/or a Permit.
- (6) "APPLICATION FEE." The fee paid to the City for application for a Certificate of Registration pursuant to § E(1).
- (7) "BANKRUPTCY CODE." The United States Bankruptcy Code of 1978, as amended including regulations promulgated by Title 11 of the United States Code.
- (8) "BEST EFFORT(S)." The best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, all applicable laws, regulations, safety, engineering and operational codes, available technology, human resources, and cost.
- (9) "CABLE FRANCHISE." Has the same meaning as "franchise" in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
- (10) "CABLE OPERATOR." Has the same meaning as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
- (11) "CABLE SERVICE." Has the same meaning as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
- (12) "CERTIFICATE OF REGISTRATION." The document issued to each Provider and its unique System to occupy the Rights-of-Way within the City that outlines the terms of that occupancy of the Rights-of-Way.
- (13) "CITY." The City of Tallmadge, Ohio.
- (14) "CITY COUNCIL." The governing body of the City of Tallmadge, Ohio.
- (15) "CODE (or C.O)." The codified ordinances of the City of Tallmadge, Ohio.
- (16) "CO-LOCATION." To install, mount, maintain, modify, operate, or replace Wireless Facilities on a Wireless Support Structure.
- (17) "CONSTRUCT." Shall mean, but not be limited to, digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing Facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the Rights-of-Way. "Construct" shall also include the act of opening and/or cutting into the surface of any paved, unimproved, or improved surface that is any part of the Right-of-Way.
- (18) "CONSTRUCTION." Shall mean, but not be limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing Facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the Rights- of-Way. "Construction" shall also include the act of opening and/or cutting into the surface of any paved, unimproved, or improved surface that is part of the Right-of- Way.
- (19) "CONSTRUCTION BOND." A bond posted to ensure proper and complete Construction and/or repair of a Facility and the affected Rights-of-Way pursuant to a Permit.
- (20) "CONSTRUCTION AND MAJOR MAINTENANCE PLAN." A written plan including maps of the expected location, design, other related equipment and Facilities of a Provider that describes in full the Construction intended to be accomplished by the Provider in the Rights-of-Way over the next calendar year.
- (21) "CONSTRUCTION PERMIT." The Permit specified in § Q et seq. which must be obtained before a Person may Construct in, locate in, occupy, maintain, move or remove Facilities from, in or on a Rights-of-Way.
- (22) "COUNTY." Means either Summit County or Portage County, Ohio. County specifically excludes any and all contractors, agents or other Persons acting on behalf of said County.
- (23) "DECORATIVE POLE." A pole, arch, or structure other than a street light pole placed in the Right-of-Way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for the following: (i) electric lighting; (ii) specifically designed informational or directional signage; or (iii) temporary holiday or special event attachments.
- (24) "DEPARTMENT OF PUBLIC SERVICE." The Department of Public Service of the City.
- (25) "DESIGN GUIDELINES." Detailed guidelines and specifications promulgated by the City in accordance with Ohio Revised Code section 4939 for the design and installation of Small Cell Facilities and Wireless Support Structures in the Right-of-Way.
- (26) "DIRECTOR OF PUBLIC SERVICE." The duly appointed Director of the Department of Public Service, or his/ her designee.
- (27) "EMERGENCY." A condition that poses a clear and immediate danger to life or health, safety, or of a significant loss of property.
- (28) "FACILITY(IES)." Any tangible thing located in any Rights-of- Way within the City, and includes Wireless Facilities and Wireless Support Structures; but shall not include boulevard plantings, ornamental plantings or gardens planted or maintained in the Rights-of-Way between a Person's property and the street edge of pavement.
- (29) "FCC." The Federal Communications Commission, or any successor thereto.
- (30) "FERC." The Federal Energy Regulatory Commission as created and amended in accordance with the Federal Power Act, 16 U.S.C. 792, or its statutory successor.
- (31) "FINANCE DIRECTOR." The duly appointed finance director for the City, or his/ her designee.
- (32) "FULL." Right-of-Way that is unable to accommodate any additional Facilities as determined by the Director of Public Service in accordance with the principles of public health, safety, and welfare, and following a reasonable analysis taking into consideration all applicable Law, commonly accepted industry standards, and routine engineering practices.
- (33) "HEIGHT." The distance measured from the pre-existing grade level to the highest point on the structure, including any Small Cell Facility, even if said highest point is an Antenna or lightning protection device.
- (34) "HISTORIC DISTRICT." A building, property, or site, or group of buildings, properties, or sites that are either of the following:
  - A. Listed in the national register for historic places or formally determined eligible for listing by the keeper of the national register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the national register, in accordance with section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C.
  - B. A registered historic district as defined in section 149.311 of the O.R.C.

- (35) "INSPECTOR." Any Person authorized by the Director of Public Service to carry out inspections related to the provisions of this chapter.
- (36) "LAW." Any local, state and/or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff or other requirement in effect either at the time of execution of this Chapter or at any time during the location of, and/or while a Provider's Facilities are located in the public Rights-of-Way.
- (37) "MAYOR." The duly elected mayor of the City of Tallmadge, Ohio or his/ her designee.
- (38) "MICRO WIRELESS PERMIT." A Permit, which must be obtained before a Person can construct, modify, collocate, or replace a Small Cell Facility or Wireless Support Structure.
- (39) "O.R.C." The Revised Code of the State of Ohio.
- (40) "OHIO UTILITY PROTECTION SERVICE." The utility protection service as defined in O.R.C. § 153.64 and/or § 3781.26 or a statutory successor thereto.
- (41) "OPEN VIDEO SERVICE." Any video programming services provided to any Person through the use of Rights-of-Way, which Person is certified by the FCC to operate an Open Video System pursuant to § 651 et seq. of the Telecommunications Act of 1996 (codified at 47 U.S.C. Title VI, Part V), regardless of the facilities used.
- (42) "OPERATOR." A Wireless Service Provider, Cable Operator, or a Video Service Provider that operates a Small Cell Facility and provides Wireless Service. For purposes of this chapter, "Operator" includes a Wireless Service provider, Cable Operator, or a Video Service Provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), as services that are fixed in nature or use unlicensed spectrum.
- (43) "PERMIT." A Construction Permit or a Micro Wireless Permit as the context requires.
- (44) "PERMIT COST." All direct, incidental and indirect costs actually incurred or realized by the City for Permit issuance, Permit oversight and pavement degradation resulting from Construction activity.
- (45) "PERMIT FEE." Money paid to the City for a Permit.
- (46) "PERMITTEE." Any Person to whom a Construction Permit and/ or a Micro Wireless Permit has been granted by the City and not revoked.
- (47) "PERSON." Any natural person or corporate entity, business association or other business entity including, but not limited to, a firm, a partnership, a joint venture, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
- (48) "PROVIDER." A Person who owns or operates a System and has a valid Certificate of Registration. The City, County, Schools, Information Technology Centers, Small Cell Facility Operators, and Cable Operators operating pursuant to a valid Cable Franchise, or Video Service Providers operating pursuant to a valid Video Service Authorization shall also be considered Providers.
- (49) "PUBLIC UTILITY." A wireless service provider as defined in division (A)(20) of section 4927.01 of the Revised Code or any company described in section 4905.03 of the O.R.C., except in divisions (B) and (I) of that section, which company is also a "Public Utility" as defined in O.R.C. section 4905.02 and regulated by the PUCO; and includes any electric supplier as defined in O.R.C. section 4933.81.
- (50) "PUCO." The Public Utilities Commission of Ohio as defined in O.R.C. § 4901.02.
- (51) "REGISTRATION MAINTENANCE FEE." The money paid to the City to maintain a Certificate of Registration and compensate the City for actual costs incurred by the City in the management, administration and control of the Rights-of-Way of the City, and which are not reasonably recoverable by the city through construction permit fees or other approved recovery mechanisms.
- (52) "RESTORATION." The process and the resultant effects by which a Rights-of-Way is returned to a condition as good as or better than its condition immediately prior to the Construction. "Restoration" shall occur in accordance with the rules or regulations as may be further enacted and amended by the City.
- (53) "RIGHT(S)-OF-WAY." The surface of, and the space within, through on, across, above or below, the paved or unpaved portion of any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a compatible public use, which, on or after July 2, 2002, is owned or controlled by the City. "Right-of-Way" excludes a private easement.
- (54) "RIGHT(S)-OF-WAY COST." All direct, incidental and indirect costs borne by the City for the management and administration of the Rights-of-Way and this chapter.
- (55) "RULES AND REGULATIONS." Any rules or regulations adopted by the Director of Public Service pursuant to Section H of this Chapter.
- (56) "SERVICE(S)." The offering of any service or utility for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, or alternatively, the provision (for a fee or otherwise) of any service or utility between two or more points for a proprietary purpose to a class of users other than the general public that in the opinion of the Mayor constitutes a service.
- (57) "SMALL CELL FACILITY." A Wireless Facility that meets both of the following requirements:
- A. Each Antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume.
  - B. All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.
- (58) "STATE." The State of Ohio.
- (59) "STEALTH." To minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Small Cell Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
- (60) "SUPPLEMENTARY APPLICATION." Any application made to Construct on or in more of the Rights-of-Way than previously allowed, to extend a Permit that had already been issued, or to otherwise modify or amend the specifics of a Permit application.
- (61) "SYSTEM." Any system of conduit, cables, ducts, pipes, wires, lines, towers, antennae wave guides, fiber optics, microwave, laser beams and any associated converters, equipment or Facilities or Utilities designed and constructed for the purpose of producing, receiving, amplifying, delivering or distributing Services within the City. A System shall specifically include, but not necessarily be limited to: electric distribution and/or transmission systems, natural or artificial gas distribution and/or transmission systems, water distribution systems, storm sewer systems, sanitary sewer systems, cable television systems, video service networks, telecommunications systems (whether voice, video, data, or other), fiber optic systems, and wireless communications systems.
- (62) "SYSTEM REPRESENTATIVE." The specifically identified agent/employee of a Provider who is authorized to direct field activities of that Provider and serve as official notice agent for System-related information. Any such System

Representative shall be required to be available at all times to receive notice of and immediately direct response to System related emergencies or situations.

- (63) "TRENCHLESS TECHNOLOGY." Shall mean, but not be limited to, the use of directional boring, horizontal drilling, microtunneling and other techniques in the Construction of underground portions of Facilities which result in the least amount of disruption and damage to Rights-of-Way as possible.
- (64) "UNDERGROUND FACILITIES." All lines, cables, conduits, pipes, posts, tanks, vaults and any other Facilities which are located wholly or partially underneath Rights-of-Way.
- (65) "UNUSED FACILITY(IES)." Facilities located in the Rights-of- Way which have remained unused for twelve (12) months and for which the Provider is unable to provide the City with a credible plan detailing the procedure by which the Provider intends to begin actively using such Facilities within the next twelve (12) months, or that the Provider has a potential purchaser or user of the Facilities who will be actively using the Facilities within the next twelve (12) months, or that the availability of such Facilities is required by the Provider to adequately and efficiently operate its System.
- (66) "UTILITY(IES)." Any water, sewer, gas, drainage, sprinkler or culvert pipe and any electric power, telecommunications, signal, communications, or cable television or video service Provider conduit, fiber, wire, cable, or operator thereof.
- (67) "UTILITY CORRIDOR(S)." Those specific areas of the Rights-of- Way designated as such by the Director of Public Service pursuant to this chapter.
- (68) "VIDEO SERVICE." Means the same as "video service" as defined in O.R.C. § 1332.21(J).
- (69) "VIDEO SERVICE AUTHORIZATION (VSA)." A "video service authorization" as issued to a Video Service Provider by the Director of the Ohio Department of Commerce in accordance with O.R.C. § 1332.24(A)(1).
- (70) "VIDEO SERVICE NETWORK." Means the same as "video service network" in O.R.C. § 1332.21(L).
- (71) "VIDEO SERVICE PROVIDER (VSP)." Means the same as "video service provider" in O.R.C. § 1332.21(M).
- (72) "WIRELESS FACILITY."
- A. Equipment at a fixed location that enable wireless communications between user equipment and a communications network, including all of the following:
- (i) Equipment associate with wireless communications;
- (ii) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.
- B. The term includes small cell facilities.
- C. The term does not include any of the following:
- (i) The structure or improvements on, under, or within which the equipment is collocated;
- (ii) Coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.
- (73) "WIRELESS SERVICE." Any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using Wireless Facilities.
- (74) "WIRELESS SUPPORT STRUCTURE." A pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting Small Cell Facilities. As used in this chapter, "Wireless Support Structure" excludes all of the following:
- A. A utility pole or other facility owned or operated by a municipal electric utility;
- B. A utility pole or other facility used to supply traction power to public transit systems including railways, trams, streetcars, and trolleybuses.
- (Ord. 53-2018. Passed 6-28-18.)

#### **1192.04 RIGHTS-OF-WAY ADMINISTRATION.**

(a) Administration. The Mayor shall be the principal City official responsible for the administration of this chapter, except as otherwise provided herein. The Mayor may delegate any or all of the duties hereunder to the Director of Public Service or other designee.

(b) Rights-of-Way Occupancy. Each Person who occupies, uses or seeks to occupy or use the Rights- of-Way to operate a System located in the Rights-of-Way, or who has, or seeks to have, a System located in any Rights-of-Way, shall apply for and obtain a Certificate of Registration pursuant to this chapter. Any Person owning, operating or maintaining a System in the Rights-of-Way without a Certificate of Registration, including Persons operating under a permit, license or franchise issued by the City prior to the effective date of this chapter shall apply for and obtain a Certificate of Registration from the City within ninety (90) days of the effective date of this chapter, unless exempted by subsection (b)(4) hereof. The ninety (90) day requirement will be extended if, due to an inability on the City's behalf, all Persons obtaining or wishing to obtain a Certificate of Registration are not accommodated within the ninety (90) day period. The application for a Certificate of Registration will consist of providing the information set forth in Section 1192.05(b) and as reasonably required by the Mayor.

(c) No Construction Without a Certificate of Registration. Following the effective date of this chapter, no Person shall Construct or perform any work on or in any Rights-of-way, nor use any System or any part thereof located on or in any Rights-of-Way without first obtaining a Certificate of Registration. Whoever violates this section is guilty of a misdemeanor as provided for in Chapter 1199.

(d) Exceptions.

- (1) The following entities are not obligated to obtain a Certificate of Registration: the City and resellers of Services that do not own any System or Facilities in the Rights-of-Way.
- (2) The following entities are required to participate in the Certificate of Registration process, but shall be exempt from the financial obligations of the Application Fee required by Section 1192.05(a) and the Registration Maintenance Fee required by Section 1192.06(a): a county; Cable Operators for the purpose of providing only Cable Service and operating pursuant to a valid Cable Franchise; a Video Service Provider for the purpose of providing only Video Service and operating pursuant to a valid Video Service Authorization issued in accordance with O.R.C. § 1332.24;
- a Small Cell Facility Operator for the purpose of providing Wireless Service; and any entity which possesses an existing and valid non-terminable, non-amendable or non- revocable written privilege or authority previously granted by the City for the use or occupancy of the Right-of-Way, whereby such exemption shall be limited to a specific term and limited conditions or obligations as previously granted. In addition, cable operators shall be exempt from any requirement of the certificate of registration process that is in direct conflict with the requirements of, and/or specifically exempted by, a valid current and valid cable franchise with the city.

(e) Systems in Place Without a Certificate of Registration. Any system or part of a system found in Rights-of-Way for which a Certificate of Registration has not been obtained or is not otherwise exempted under subsection (d)(1) hereof shall be deemed to be a nuisance and an unauthorized use of the Rights-of- Way. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to abating the nuisance; taking possession of the facilities and/or noncomplying portion of such system; and/or prosecuting the violator.

(f) Future Uses. Subject to applicable Law, in allowing Providers and Permittees to place Facilities in the Rights-of-Way, the City shall not be liable for any damages caused thereby to any Provider's Facilities that are already in place or that shall be placed in the Rights-of-Way unless those damages arise out of the sole negligence, gross negligence, willful misconduct, or fraud of the City. No Provider is entitled to rely on the provisions of this chapter as creating a special duty to any Provider.

(g) Discontinuance of Operations, Abandoned and Unused Facilities.

- (1) A Provider who has discontinued or is discontinuing its operations of any System in the City shall, not less than thirty (30) days after discontinuing operations of the System, send written notice of the discontinuance to the Director of Public Service.
- (2) If use of a System has been discontinued for a period exceeding ninety (90) consecutive days or a total of one hundred eighty (180) days in any 365-day period, without notice of discontinued operations given to the City by the Provider, and except for a period caused by acts of God as established in Section 1192.19(j) of this chapter, the System shall be deemed abandoned.
- (3) Abandoned Systems are deemed to be a nuisance and the City may exercise any remedies or rights it has in law or in equity including, but not limited to:
  - A. Abating the nuisance and taking all action necessary to recover the City's costs and to abate said nuisance, including, but not limited to, those methods set forth in O.R.C. § 715.261;
  - B. Taking possession of the System and restoring it to a useable condition subject to a finding of the PUCO pursuant to the requirements of O.R.C. § 4905.20 and O.R.C. § 4905.21; or
  - C. Requiring removal of the System by the Provider or the Provider's surety.
- (h) Nature of Issuance. A Certificate of Registration shall not convey equitable or legal title in the Rights-of-Way. A Certificate of Registration is only the nonexclusive, limited right to occupy Rights-of-Way in the City, for the limited purposes and for the limited period stated in the Certificate of Registration and in accordance with this chapter. The rights to occupy the Right-of-Way may not be subdivided or subleased; provided, however, that two (2) or more Providers may locate Facilities in the same area of the Rights-of-Way so long as each such Provider complies with the provisions of this chapter. Such Providers may file a joint application for a Construction Permit. A Certificate of Registration does not excuse a Provider from obtaining appropriate access or pole attachment agreements before locating its Facilities on Facilities of others, including the City's Facilities. A Certificate of Registration does not prevent a Provider from leasing space in or on the Provider's System, so long as the sharing of Facilities does not cause a violation of law, including the provisions of this chapter. A Certificate of Registration does not excuse a Provider from complying with any provisions of the Code or other applicable law.
- (i) Other Approvals, Permits, and Agreements. In addition to a Certificate of Registration, Providers shall obtain any and all regulatory approvals, permits, authorizations, or licenses necessary for the offering or provision of such Services from the appropriate federal, state and local authorities and upon the City's reasonable request, shall provide copies of such documents to the City. Further, a Certificate of Registration issued pursuant to this chapter shall not entitle a Provider to use, alter, convert to, or interfere with, the Facilities, Wireless Facilities, Wireless Support Structures, easements, poles, conduits, lines, pipelines, wires, fiber, cable or any other real or personal property of any kind whatsoever under the management or control of the City.  
(Ord. 53-2018. Passed 6-28-18.)

#### **1192.05 CERTIFICATE OF REGISTRATION APPLICATIONS.**

- (a) Certificate of Registration Applications. To obtain a Certificate of Registration to Construct, own, or maintain any System within the City, or to obtain a renewal of a Certificate of Registration issued pursuant to this chapter, an Application must be filed with the City on the form adopted by the Department of Public Service. For all applications the city shall collect an Application Fee. The Application Fee shall be equal to all the actual and direct costs incurred by the City that are associated with receiving, reviewing, processing and granting (or denying) an Application. At the time of its decision to either grant or deny an Application the City shall calculate and assess all actual and direct costs involved in receiving, reviewing, processing and granting (or denying) the Application and provide a written invoice to the Applicant for the appropriate amount. The City shall require that the Applicant remit all Application Fee amounts invoiced within thirty (30) days of its decision to either grant or deny a Certificate of Registration. Any Applicant who fails to timely remit such invoiced Application Fee amounts shall be subject to the penalties of this chapter, the imposition of any other legal or equitable remedies available to the City and the immediate revocation of any Certificate of Registration having been issued.
- (b) Retention of Expert Assistance.
  - (1) The City may, in its sole discretion, and at any time in the review process, select and hire any consultant(s) and/ or expert(s) necessary to assist the City in reviewing and/ or evaluating any Application.
  - (2) In the event that the City decides to retain a consultant and/ or expert to assist the City in reviewing and/ or evaluating an Application, the City shall send written notice to the Applicant, including an estimate of the cost for such review. The Applicant shall have five (5) business days from the date of the mailing of the notice to elect to withdraw the Application without any liability for any costs or expenses in connection with the consultant and/ or expert review.
  - (3) The total amount of funds needed set forth in subsection (b) of this section may vary with the scope and complexity of the System, the completeness of the Application, and other information as may be needed to complete the necessary review.
  - (4) The Applicant shall pay for the cost of the consultant and/ or expert review and/ or evaluation and for any testimony from the consultant and/ or expert in any hearing as requested by the City.
    - A. (No Certificate of Registration shall be issued to an Applicant if such Applicant has not timely paid any fee required under the Code or if the Applicant owes payment on any outstanding invoices for costs recoverable by the City under this chapter.
- (c) Information Required for Application to Obtain a Certificate of Registration.
  - (1) The Applicant or Provider shall keep all of the information required in this section current at all times, provided further that Applicant or Provider shall notify the City of any changes to the information required by this section within thirty (30) days following the date on which the Applicant or Provider has knowledge of such change. The information provided to the City at the time of Application shall include, but not be limited to:
    - A. Each Applicant's name, legal status (i.e. partnership, corporation, etc.), street address, e-mail address, telephone number and facsimile number, if applicable; and
    - B. The name, address, e-mail address, telephone number, and facsimile number, if applicable, of a System Representative. The System Representative shall be available to the City at all times. Current information regarding how to contact the System Representative in an Emergency shall be provided at the time of Application and shall be updated as necessary to assure accurate contact information is available to the City at all times; and
    - C. A certificate of insurance where required to be provided to meet the requirements of this section shall:
      1. Verify that an insurance company licensed to do business in the State of Ohio has issued an insurance policy to the Applicant;
      2. Verify that the Applicant is insured on an occurrence basis against claims for personal injury, including death, as well as claims for property damage arising out of the:
        - a. Use and occupancy of the Rights-of- Way by the Applicant, its officers, agents, employees and contractors; and
        - b. Placement and use of Facilities in the Rights-of-Way by the Applicant, its officers, agents, employees and contractors, including, but not limited to, protection against liability arising from any and all operations, damage of underground facilities and collapse of property;
      3. Name the City, its elected officials, officers, employees, agents and volunteers as an additional insured as to whom the comprehensive general liability and completed operation and products liability insurance required herein are in force and applicable and for whom defense will be provided as to all such coverages, as is required within this chapter;

4. Require that the City be notified thirty (30) days in advance of cancellation of, or coverage changes in, the policy. The liability insurance policies required by this section shall contain the following endorsement:  
"It is hereby understood and agreed that this policy may not be diminished in value, canceled nor the intention not to renew be stated, until thirty (30) days after receipt by the City, by registered mail, return receipt requested, of a written notice addressed to the Mayor or her/his designee of such intent to cancel, diminish or not to renew."
5. Within thirty (30) days after receipt by the City of said notice, and in no event later than five (5) days prior to said cancellation, the Provider (or Applicant) shall obtain and furnish to the Director of Public Service a certificate of insurance evidencing replacement insurance policies.
6. Satisfy the requirements for comprehensive liability coverage, automobile liability coverage and umbrella coverage as provided in the City's rules and regulations. Notwithstanding the applicable rules and regulations:
  - a. The City reserves the right to require any other insurance coverage it deems necessary after review of any proposal submitted by Applicant.
  - b. The City's examination of, or failure to request or demand, any evidence of insurance in accordance with this chapter shall not constitute a waiver of any requirement of this section and the existence of any insurance shall not limit Applicant's obligations under this chapter.
  - c. The Director of Public Service may modify or waive any of the requirements in this section if they are not necessary to determine the sufficiency of insurance. The Director of Public Works may request applicable and pertinent additional information if it is necessary to determine the sufficiency of the insurance.
- D. Documentation that Applicant or Provider maintains standard workers' compensation coverage as required by law. Similarly, Provider shall require any subcontractor to provide workers' compensation coverage in amounts required by law for all of the subcontractor's employees.
- E. If the Person is a corporation, upon specific request of the City, a copy of the certificate of incorporation (or its legal equivalent) as recorded and certified to by the secretary of state (or legal equivalent) in the state or country in which incorporated.
- F. A copy of the Person's certificate of authority from the PUCO and/or the FCC and/or FERC, if the Person is lawfully required to have or actually does possess such certificate(s) from said commission(s) and any other approvals, permits, or agreements.
- G. Upon request of the City, a narrative (or if applicable, PUCO/FCC/FERC application information) describing Applicant's proposed activities in the City including credible information detailing Applicant's financial, managerial, and technical ability to fulfill Applicant's obligations under this chapter and carry on Applicant's proposed activities.

(d) Criteria for Issuance of a Certificate of Registration.

(1) In deciding whether to issue a Certificate of Registration, the City shall consider:

- A. Whether the issuing of the Certificate of Registration will contribute to the health, safety, and welfare of the City and its citizens.
- B. Whether the issuing of the Certificate of Registration will be consistent with this chapter and the City Code.
- C. Whether Applicant has submitted a complete Application and has secured all certificates and other authorizations required by law in order to Construct and operate a System in the manner proposed by the Applicant.
- D. Whether the Applicant is delinquent on any taxes or other obligations owed to the City, County or State of Ohio.
- E. Unless Applicant is otherwise exempted from such consideration by O.R.C. § 4939.03(c)(5), whether the Applicant has the requisite financial, managerial, and technical ability to fulfill all of its obligations under this chapter and the issuance of a Certificate of Registration.
- F. Any other applicable law, ordinance, rule or regulation.

(e) Grant or Denial of an Application for a Certificate of Registration.

- (1) The City, not later than sixty (60) days after the date of filing by an Applicant of a completed Application for a Certificate of Registration, shall grant or deny the Application.
- (2) If an Application for a Certificate of Registration is denied, the Applicant may request from the City, within thirty (30) days of the notice of denial, the City's reasons for denying the Application.

(f) Obligations of a Provider Upon Receipt of a Certificate of Registration. In addition to the other requirements set forth herein and in the Rules and Regulations of the City each Provider shall:

- (1) Use its Best Efforts to cooperate with other Providers and users of the Rights-of-Way and the City for the best, most efficient, and least obtrusive use of Rights-of-Way, consistent with safety, and to minimize traffic and other disruptions including street cuts; and
- (2) When possible, participate in joint planning, Construction and advance notification of Rights-of-Way work, as may be required by the City; and
- (3) Upon reasonable written notice, and at the direction of the Director of Public Service, promptly remove or rearrange Facilities as necessary for public safety; and
- (4) Perform all work, Construction, maintenance or removal of Facilities within the Rights-of-Way in accordance with good engineering, Construction and arboricultural practice (if applicable), including any appropriate state building codes, safety codes and law, and use Best Efforts to repair and replace any street, curb or other portion of the Rights-of-Way, or Facilities located therein, to a condition to be determined by the Director of Public Service to be adequate under current standards and not less than materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inconvenience to the public, the City and other Providers, all in accordance with all applicable provisions of this chapter, the Code, and any Rules and Regulations that the City may adopt; and
- (5) Construct, install, operate and maintain its Facilities and System in a manner consistent with all applicable laws, ordinances, construction standards and governmental requirements including, but not limited to, the City's Zoning Ordinance, the National Electric Safety Code, National Electric Code and applicable FCC, FERC, or other federal, state and/or local Rules and Regulations; and
- (6) Be on notice that removal of trees, or the use of vegetation management programs within the Rights-of-Way of the City requires prior written approval by the Director of Public Service or his/her designee. Any such activities, unless an Emergency, shall only be performed following the prior written approval of the Director of Public Service or his/her designee and must be performed in accordance with the then most current standard horticultural and arboreal practices as promulgated by entities such as the National Arbor Day Foundation, the International Society of Arboriculture, and the Tree Care Industry, all as may be required by the City. Pruning shall at a minimum meet or exceed the requirements of the most current version of the American National Standards Institute ANSI A300 standard. Any additionally required horticultural and arboreal practices and guidelines shall be described in the Rules and Regulations adopted by the Director of Public Service pursuant to Section 1192.08(e). Emergency

removal of trees or the use of vegetation management programs within the Rights-of-Way of the City may be performed in Rights-of-Way as described herein and in accordance with the Rules and Regulations, but the Director of Public Service shall be provided notice of such Emergency work being performed within two (2) business days of the start of the work. Any non-emergency tree removal or the use of vegetation management programs within the Rights-of-Way that is performed without the Director of Public Service or designee's written permission shall subject a Person to the penalties of Section 1192.20 and may further require that the tree or vegetation be replaced, at the sole expense of the responsible Person, with a healthy tree or vegetation of like kind and quality; and

- (7) Warrant that all worker facilities, conditions and procedures that are used during Construction, installation, operation and maintenance of the Provider's Facilities within the Rights-of-Way shall comply with all applicable standards of the Federal Occupational Safety and Health Administration; and
  - (8) Use its Best Efforts to cooperate with the City in any Emergencies involving the Rights-of-Way; and
  - (9) Provider shall, weather permitting, remove all graffiti within ten (10) calendar days of notice. Provider shall remove any and all graffiti on any of the Provider's Facilities located within the City Rights-of-Way. Should the Provider fail to do so, the City may take whatever action is necessary to remove the graffiti and bill the Provider for the cost thereof; and
  - (10) Providers shall field identify their Facilities in the Rights-of- Way whenever Providers are notified by the City that the City has determined that such identification is reasonably necessary in order for the City to begin planning for the Construction, paving, maintenance, repairing, relocating or in any way altering any street or area in the Rights-of-Way as defined in this chapter. The City shall notify the Providers of the City's date to begin the process at least thirty (30) days prior to the commencement of said activities. In field identifying Facilities:
    - A. Providers shall identify all Facilities that are within the affected Rights-of-Way using customary industry standards and distinct identification; and
    - B. Facilities will be so marked as to identify the Provider responsible for said Facilities; and
    - C. Should any such marking interfere with the Facilities' function, create a safety problem or violate any safety code, alternative methods of marking the Facilities may be approved by the Director of Public Service; and
    - D. All markings should be clearly readable from the ground and include the Provider's name, logo and identification numbering or tracking information. No advertising will be permitted.
  - (11) A Provider that is replacing an existing utility pole shall be responsible for coordinating with all other Providers to ensure the orderly transfer of all lines or cables to the replacement utility pole, the removal of the existing utility pole, and the Restoration of the Rights-of-Way within thirty (30) days, weather permitting, after the replacement utility pole is installed. Upon request, the Director of Public Service may grant the Provider additional time for good cause.
- (g) Establishment of Utility Corridors.
- (1) The Director of Public Works may assign specific corridors within the Rights-of-Way, or any particular segment thereof as may be necessary, for each type of Facilities that are, or that the Director of Public Works expects, may someday be, located within the Rights-of-Way.
  - (2) Any Provider whose Facilities are in the Rights-of-Way and are in a position at variance with Utility Corridors established by the Director of Public Works shall at the time of the next Construction of the area, excluding normal maintenance activities, move such Facilities to their assigned position within the Rights-of-Way. Existing Underground Facilities located within a designated Utility Corridor shall not be required to relocate into adjacent or alternative portions of the Rights-of-Way unless they are in conflict with an actual or proposed public improvement project. The above requirements may be waived by the Director of Public Works for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the Facilities, public safety, customer service needs, law precluding such Underground Facilities, and hardship to the Provider. If a Provider is denied a requested waiver from the above requirements, the Provider may appeal the denial of the Director of Public Works to the Mayor. The decision of the Mayor shall be final.
  - (3) The Director of Public Works shall make every good faith attempt to accommodate all existing and potential users of the Rights-of-Way as set forth in this chapter.
    - (4) Providers may enter into written agreements to use existing poles and conduits with the owners of same and shall use Best Efforts to install their Facilities within the Rights-of-Way.
    - (5) No Facility placed in any Rights-of-Way shall be placed in such a manner that interferes with normal travel on such Rights-of-Way.
    - (6) Unless otherwise stated in a Certificate of Registration or Permit, all Facilities within the Rights-of-Way shall be Constructed and located in accordance with the City Code of Ordinances and with the following provisions:
      - A. Whenever all existing Facilities that have been traditionally located overhead are located underground in a certain area within the City, a Provider who desires to place its Facilities in the same area must also locate its Facilities underground.
      - B. Whenever a Provider is required to locate or re-locate Facilities underground within a certain area of the City, every Provider with Facilities within the same area of the City shall concurrently re-locate their Facilities underground.
      - C. The above requirements may be waived by the Director of Public Works for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the Facilities, public safety, customer service needs, law precluding such undergrounding of facilities, and hardship to the Provider. If a Provider is denied a requested waiver from the above requirements, the Provider may appeal the denial of the Director of Public Works to the Mayor.
- (h) Historic Districts.
- (1) The City shall have the authority to prohibit the use or occupation of the Right-of-Way by a Provider if the Right-of-Way for which the Provider seeks use and occupancy lies within a Historic District/Design Control District.
  - (2) As a condition for approval for the Co-location or installation of Small Cell Facilities and/ or Wireless Support Structures in an area of the City designated as a Historic District/Design Control District, the City may:
    - A. Require reasonable, technically feasible, and nondiscriminatory design or concealment measures for the Small Cell Facilities and Wireless Support Structures.
    - B. Request that a Provider comply with the design and aesthetic standards of the Historic District/Design Control District or a Residential District, as provided for in the City's Design Guidelines.
    - C. Request that a Provider explore the feasibility of using certain camouflage measures to improve the aesthetics of the Small Cell Facilities and Wireless Support Structures to minimize the impact to area aesthetics.
  - (3) This section may not be construed to limit the City's authority to enforce local codes, administrative Rules and Regulations adopted by ordinance, which are applicable to a historic area designated by the state or City, such as the Design Control District, and historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. Section 332(c)(7), the requirements for facility modifications under 47 U.S.C. Section 1455(a), or the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.
- (Ord. 53-2018. Passed 6-28-18.)



### **1192.06 COMPENSATION FOR CERTIFICATE OF REGISTRATION.**

(a) Compensation. As compensation for the City's costs to administer this chapter, manage, administer and control the Rights-of-Way and maintain each Certificate of Registration issued, every Provider or any Person operating a System or otherwise using and occupying the Rights-of-Way shall pay to the City a Registration Maintenance Fee. The Registration Maintenance Fee shall be determined and assessed to Providers and other Persons operating a System or otherwise using and occupying the Rights-of-Way as an annual fee, for each calendar year, based upon the following:

- (1) Providers utilizing equal to or greater than thirty miles of Right-of-Way shall pay a fee of three thousand dollars per year.
- (2) Providers utilizing less than thirty miles of Right-of-Way shall pay a fee of one thousand dollars per year.

(b) Timing. Registration Maintenance Fees shall be paid in advance for each year prior to January 31. Partial year permits shall be prorated.

(c) Taxes and Assessments. To the extent taxes or other assessments are imposed by any taxing authority or community authority on the use of City property as a result of a Provider's use or occupation of the Rights-of-Way, the Provider shall be responsible for payment of such taxes or assessments. Such payments shall be in addition to any other fees payable pursuant to this chapter and shall not be considered an offset to, or in lieu of, the fees and charges listed in this chapter. The Registration Maintenance Fee is not in lieu of any tax, fee, or other assessment except as specifically provided in this chapter, or as required by applicable law.

(d) Interest on Late Payments. In the event that any Registration Maintenance Fee is not paid to the City by April 1, the Provider shall pay a monthly late charge of one percent (5%) of the unpaid balance for each month or any portion thereof for which payment is not made. Late payments on Registration Maintenance Fees may result in the denial of future Right-of-Way permits.

(e) No Accord and Satisfaction. No acceptance by the City of any Registration Maintenance Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such Registration Maintenance Fee payment be construed as a release of any claim the City may have for additional sums payable.

(Ord. 53-2018. Passed 6-28-18.)

### **1192.07 OVERSIGHT AND REGULATION.**

(a) Reports. Upon the request of the City, a Provider shall promptly submit to the City any information or report, but not including confidential/ proprietary information as described in subsection (b) hereof, that is reasonably related to a Provider's obligations under this chapter, its business and operations with respect to the System or its operation, in such form and containing such information as the City shall specify. Such information or report shall be accurate and complete and supplied within thirty (30) days of the City's request.

(b) Confidential/ Proprietary Information. All information submitted to the City that is considered confidential information, trade secret and/or proprietary information or information that upon public its disclosure would be highly likely to place critical portions of the Provider's System in real danger of vandalism, sabotage or an act of terrorism, must be clearly marked as such when submitted. The City shall endeavor to exercise all reasonable legal protections so as not to publicly disclose to any third party such information unless required by law. The City shall, following receipt of a request for public disclosure of clearly marked trade secret and/or proprietary information submitted by a Provider, endeavor to use reasonable Best Efforts to timely place the Provider's System Representative on notice that such a request for public disclosure has been made, at which point it will be the Provider's sole and exclusive responsibility to take whatever steps it deems necessary to protect such documents from disclosure.

(c) Provider's Expense. All reports and records required under this chapter shall be furnished at the sole expense of a Provider.

(d) Right of Inspection and Audit. The City's designated representatives shall have the right to inspect, examine, or audit during normal business hours and upon reasonable notice to a Provider under the circumstances, documents, records, or other information which pertain to a Provider's operation of a System within the City that are related to its obligations under this chapter. All such documents shall be made available within the City or in such other place that the City may agree upon in writing in order to facilitate said inspection, examination, or audit.

(e) Rules and Regulations. The Director of Public Service may promulgate (and from time to time amend) the Rules and Regulations regarding this chapter, Design Guidelines, construction standards and occupancy requirements of the Right-of-Way. Prior to the initial adoption of the Rules and Regulations, the Director of Public Service shall publish written notice of the proposed language of such adoption, via the City of Tallmadge website. Each Provider shall then have thirty (30) days following the date of posting to provide written comment regarding the proposed language to the Director of Public Service. The Director of Public Service shall, following said time for and any submittal of comments, review of the Providers' comments and suggestions, adopt the Rules and Regulations, Design Guidelines, construction standards and occupancy requirements of the Right-of-Way in a manner that best serves the City.

(Ord. 53-2018. Passed 6-28-18.)

### **1192.08 REGISTRATION TERM.**

The term of each Certificate of Registration granted under this chapter shall be valid from the date of issuance until such time as it is revoked, terminated, has lapsed or is properly amended. (Ord. 53-2018. Passed 6-28-18.)

### **1192.09 SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES.**

(a) In accordance with Ohio Revised Code section 4939, this section establishes terms and conditions for the use of the Right-of-Way by an Operator to Collocate Small Cell Facilities and Construct, maintain, modify, operate, or replace Wireless Support Structures to distribute Wireless Service in the City.

(b) The Application procedures, Permit Fees, and auditing procedures outlined in this chapter shall be applicable to applications to establish Wireless Facilities. However, Wireless Facilities that are not Small Cell Facilities or Wireless Support Structures as defined in this chapter are not subject to this section I.

(c) In accordance with this chapter, and unless otherwise prohibited by Law, each Person who occupies, uses, or seeks to occupy or use the Rights-of-Way to operate a Small Cell Facility or Wireless Support Structure in the Right-of-Way, or who has, or seeks to have, a Small Cell Facility or Wireless Support Structure located in any Right-of-Way, shall apply for and obtain a Certificate of Registration for the System pursuant to this chapter.

(d) All Applications for the Construction or modification of a Small Cell Facility or Wireless Support Structure shall comply with the Construction Permit requirements set forth in this chapter and any other applicable Law.

(e) In addition to the requirements in (c) and (d) of this section, a Micro Wireless Permit shall be submitted by any Person that seeks to Construct, modify, collocate, or replace a Small Cell Facility or Wireless Support Structure in any Right-of-Way. The City's consent shall not be required for the replacement of a Small Cell Facility and/ or Wireless Support Structure with a Small Cell Facility and/ or Wireless Support Structure, respectively, that is consistent with the City's Design Guidelines and is substantially similar to the existing Small Cell Facility and/ or Wireless Support Structure, or the same size or smaller than the existing Small Cell Facility and/ or Wireless Support Structure and complies with the requirements for Construction Permits as provided in this chapter.

(1) For processing a Micro Wireless Permit Application, the City may charge a fee of two hundred and fifty dollars (\$250.00) for each Small Cell Facility and/or Wireless Support Structure. The City may adjust this charge ten per cent every five years, rounded to the nearest five dollars.

(2) The City shall grant or deny a Micro Wireless Permit in accordance with any required timelines under Law.

A. If the City fails to approve or deny a Micro Wireless Permit within the required time period, provided that the time period is not otherwise tolled in accordance with the provisions of this section, the Micro Wireless Permit shall be deemed granted upon the requesting entity notifying the City that the time period for granting or denying the request for consent has lapsed.

- (3) Requests for consent that do not meet the requirements listed on the Micro Wireless Permit Application or stated herein or in the City's Design Guidelines shall be deemed incomplete or shall otherwise be denied by the City.
- A. If a Micro Wireless Permit is deemed incomplete, the City shall provide written notice to the Applicant that clearly and specifically delineates all missing documents or required information.
1. Once the Applicant submits the documents or information in response to the City's notice of incompleteness, the City shall, within sixty (60) calendar days, grant, deny, or deem the Micro Wireless Permit to be incomplete due to not providing the information identified in the original notice of incompleteness.
  2. For a Micro Wireless Permit that is deemed incomplete for a second or subsequent time, the City shall continue to follow the process in subsection (e)(3)A.1. of this section until such time that a complete Application is received from the Applicant. At such time, the City shall, within sixty (60) calendar days, grant or deny the Micro Wireless Permit.
- B. If a Micro Wireless Permit is denied, the City shall provide in writing its reasons for denying the request, supported by substantial, competent evidence, and such information at the Applicant may reasonably request to obtain consent.
1. Except in the case of a Public Utility subject to the jurisdiction and recognized on the rolls of the PUCO or a Cable Operator possessing a valid Cable Franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, the City, for good cause shown, may withhold, deny, or delay its consent to any Person based upon the Person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.
- (4) The City shall permit a Person seeking to Construct, modify, collocate, or replace more than one Small Cell Facility or more than one Wireless Support Structure within the Right-of-Way to file a consolidated Application for consent.
- A. No more than thirty (30) Small Cell Facilities or thirty (30) Wireless Support Structures shall be proposed within a single Application to receive a single Permit for the Construction, modification, Collocation, or replacement of Small Cell Facilities or Wireless Support Structures in the Right-of-Way.
- B. A single Application may only address multiple Small Cell Facilities or Wireless Support Structures if they each involve substantially the same type of Small Cell Facility and/or substantially the same type of Wireless Support Structure.
- C. The Director of Public Service may separately address Applications for which incomplete information has been received or which are denied.
- (5) If the number of requests for consent is likely to result in difficulty processing Applications within the time limits set forth in Law due to the lack of resources of the City, then the City may toll the time limits as follows:
- A. The time period for the City to grant or deny a Micro Wireless Permit may be tolled for up to twenty-one (21) days for the first fifteen (15) requests for consent for Small Cell Facilities or Wireless Support Structures received by the City above the thresholds provided in the Table below within any consecutive thirty-day period:

| Population of City at the time that the Small Cell Facility or Wireless Support Structure request for consent is received: | Number of Applications: |
|--|-------------------------|
| 30,000 persons or less   | 15 applications or more |
| 30,001 to 40,000 persons   | 20 applications or more |
| 40,001 to 50,000 persons   | 25 applications or more |
| 50,001 to 60,000 persons   | 30 applications or more |
| 60,001 to 100,000 persons  | 60 applications or more |

- B. For every additional fifteen requests that the City receives above the thresholds provided in the Table, the City may toll the time period for those requests for up to fifteen (15) days in addition to the time period provided in subsection (e)(5)A. hereof.
- C. In no instance shall the City toll the time period for any Small Cell Facility or Wireless Support Structure Micro Wireless Permit by more than ninety (90) consecutive days.
- D. Upon request by the Applicant, the City shall provide written notice of the time limit for a Small Cell Facility or Wireless Support Structure Micro Wireless Permit.
- (f) The total annual charge to reimburse the City for the Collocation of a Small Cell Facility by an Operator to a Wireless Support Structure owned by the City and located in the Right-of-Way shall be two hundred dollars (\$200.00) per Small Cell Facility. The City may adjust this charge ten per cent every five years, rounded to the nearest five dollars.
- (g) The City's approval term of a Collocation to a Wireless Support Structure shall be for a period of not less than ten (10) years, with a presumption of renewal for successive five-year terms, unless otherwise terminated or not renewed for cause or by mutual agreement between the Operator and the City.
- (1) An Operator may remove its Small Cell Facilities at any time subject to applicable Permit requirements and may stop paying annual charges or fees established by Law.
  - (2) In the event that use of a Small Cell Facility or Wireless Support Structure is discontinued, the owner shall submit written notice to the City to discontinue use and the date when the use shall be discontinued. The owner shall promptly remove the Small Cell Facility or Wireless Support Structure once its use has been discontinued.
  - (3) If a Small Cell Facility or Wireless Support Structure is Abandoned, the City may remove the Small Cell Facility or Wireless Support Structure at the owner's expense.
- (h) The Director of Public Service is authorized to establish, implement, and amend, from time to time, Design Guidelines regarding, among other things: (1) the location of any ground-mounted Small Cell Facilities; (2) the location of a Small Cell Facility on a Wireless Support Structure; (3) the appearance and concealment of Small Cell Facilities, including those relating to materials used for arranging, screening, or landscaping; and (4) the design and appearance of a Wireless Support Structure, including any height requirements adopted by the City.
- (1) The City, as opposed to the Construction of a new Wireless Support Structure in the Right-of-Way, shall prefer co-locating Small Cell Facilities on existing Wireless Support Structures without increasing the Height of the Wireless Support Structure by more than five (5) feet, including the Antenna and any associated shroud or concealment material.
  - (2) The City shall allow, consistent with Law and for the purpose of providing Wireless Service, Collocation of a Small Cell Facility by an Operator to a Wireless Support Structure owned by the City and located in the Right-of-Way, provided that the Operator comply with the City's Design Guidelines and any reasonable terms and conditions for such Collocation that are adopted by the City and consistent with the Design Guidelines and this chapter.
- A. The City may condition approval of the Collocation on replacement or modification of the Wireless Support Structure at the Operator's cost if the City determines that replacement or modification is necessary for compliance with its

construction or safety standards.

- B. A replacement or modification of the Wireless Support Structure shall conform to the applicable Design Guidelines and the City's applicable specifications for the type of structure being replaced.
- C. The City may retain ownership of a replacement Wireless Support Structure.
- D. The City may require removal and relocation of a Small Cell Facility or Wireless Support Structure, at the Permittee's sole expense, in order to accommodate Construction of a public improvement project by the City.
  - (i) The City may propose an alternate location to the proposed location of a new Wireless Support Structure that is within one hundred (100) feet of the proposed location or within a distance that is equivalent to the width of the Right-of-Way in or on which the new Wireless Support Structure is proposed, whichever is greater, which the Operator shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs. (Ord. 53-2018. Passed 6-28-18.)

#### **1192.10 CIVIL FORFEITURES.**

In addition to any other penalties set forth in this chapter and the remedy of specific performance, which may be enforced in a court of competent jurisdiction, the City may assess an additional penalty of civil forfeiture for failure to comply with any provision of this chapter. Such penalty shall be a monetary sum, payable to the City, in the amount of five hundred dollars (US\$500.00) per twenty-four (24) hour day of violation and any subsequent portion of a day less than twenty-four (24) hours in length. Prior to assessing said penalty, the City will provide written notice to the Provider detailing the failure to comply with a specific provision of this chapter. Such notice shall also indicate that said penalty shall be assessed in fifteen (15) calendar days subsequent to the date of receipt if compliance is not achieved. If a Provider desires to challenge such penalty, Provider must request a hearing before the Mayor within ten (10) days of service of the notice. Such hearing shall be held within thirty (30) days of the Provider's request. If Provider requests such hearing before the Mayor, such penalty shall be temporarily suspended. However, if, after the hearing, the Mayor determines that Provider failed to comply with the specific provision(s) of this chapter referenced in the notice, such penalty shall be assessed starting with the fifteen (15) calendar days after receipt of the notice referenced in this section and continuing each day thereafter until compliance is achieved. The determination of the Mayor shall be final. The Provider may file an administrative appeal pursuant to O.R.C. Ch. 2506. The penalty shall continue to accrue during the appeal unless the Provider obtains a stay and posts a supersede as bond pursuant to O.R.C. § 2505.09 or the Provider comes into full compliance with this chapter. (Ord. 53-2018. Passed 6-28-18.)

#### **1192.11 TERMINATION OF CERTIFICATE OF REGISTRATION.**

- (a) Default Notice Provided. The City through its Department of Public Service shall give written notice of default to a Provider if the City, in its sole discretion, determines that a Provider has:
  - (1) Violated any provision of this chapter or any law, ordinance, rule or regulation of the City and failed to cure; or
  - (2) Evaded or attempted to evade any provision of the issuance of a Certificate of Registration or the acceptance of it; or
  - (3) Practiced any fraud or deceit upon the City; or
  - (4) Made a misrepresentation of fact in the Application for a Certificate of Registration.
- (b) Cure Required. If a Provider fails to cure a default within thirty (30) calendar days after such notice is served by the City then the City may exercise any remedies or rights it has at law or in equity to terminate the Certificate of Registration. If the Director of Public Service decides there is cause or reason to terminate the Certificate of Registration, the following procedure shall be followed:
  - (1) City shall serve a Provider with a written notice of the reason or cause for proposed termination of the Certificate of Registration and shall allow a Provider a minimum of ten (10) calendar days to cure.
  - (2) If the Provider fails to cure within ten (10) calendar days, the Director of Public Service may declare the Certificate of Registration terminated. The determination of the Director of Public Service shall be final.
  - (3) If a Certificate of Registration is terminated, the City may, in its sole discretion, restrict future Certificates of Registration from being issued to the Provider. (Ord. 53-2018. Passed 6-28-18.)

#### **1192.12 UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY.**

- (a) No Use Without Authorization. No Person shall use the Rights-of-Way to operate a System that has not been authorized by the City in accordance with the terms of this chapter and been issued a Certificate of Registration.
- (b) No Use Without Certificate of Registration. No Person shall place or have placed any Facilities in, on, above, within, over, below, under, or through the Rights-of-Way, unless allowed under this chapter or having been issued a Certificate of Registration.
- (c) Unauthorized Use a Violation. Each and every unauthorized use shall be deemed to be a violation and a distinct and separate offense. Each and every day any violation of this chapter continues shall constitute a distinct and separate offense.
- (d) Distinct and Separate Offense. No Person shall fail to comply with the provisions of this chapter. Each and every failure to comply shall be deemed a distinct and separate offense. Each and every day any violation of this chapter continues shall constitute a distinct and separate offense.
- (e) Penalty Assessed. The violation of any provision of this chapter shall be unlawful and a misdemeanor offense. The penalty for any violation of this chapter shall be as provided in Section 1192.20. (Ord. 53-2018. Passed 6-28-18.)

#### **1192.13 ASSIGNMENT OR TRANSFER OF OWNERSHIP AND RENEWAL.**

- (a) Assignment or Transfer Approval Required. A Certificate of Registration shall not be assigned or transferred, either in whole or in part, other than to an Affiliate, without the prior written consent of the City. This includes an assignment or transfer by means of a fundamental corporate change or fundamental partnership change.
- (b) Procedure to Request Assignment or Transfer Approval. The parties to the assignment or transfer of a Certificate of Registration shall make a written request to the City for its consent in the form of the Certificate of Registration Application.
- (c) Review by City. The City will review the qualifications (including, but not limited to legal, technical and financial where appropriate) of the proposed assignee or transferee and terms of the existing Certificate of Registration. Within one hundred and twenty (120) days of actual receipt of the request for assignment or transfer, the City shall approve or deny such assignment or transfer request in writing, setting forth any conditions for assignment or transfer.
- (d) Fundamental Corporate Change. For purposes of this section, fundamental corporate change means the sale or transfer of a controlling interest in the stock of a corporation or the sale or transfer of all or a majority of a corporation's assets, merger (including a parent and its subsidiary corporation), consolidation or creation of a subsidiary corporation. For the purposes of this section, fundamental partnership change means the sale or transfer of all or a majority of a partnership's assets, change of a general partner in a limited partnership, change from a limited to a general partnership, incorporation of a partnership, or change in the control of a partnership.
- (e) Certificate of Registration and Assignee/Transferee Replacement Issuance Required. In no event shall a transfer or assignment of ownership or control be ultimately acceptable to the City without transferee or assignee requesting and being issued a replacement Certificate of Registration within ninety (90) days of transfer or assignment. (Ord. 53-2018. Passed 6-28-18.)

#### **1192.14 CONSTRUCTION PERMITS.**

- (a) Construction Permit Requirement. Except as otherwise provided in the Code, no Person may Construct in any Rights-of-Way without first having obtained a Construction Permit as set forth below. This requirement shall be in addition to any requirement set forth

in the Code.

- (1) A Construction Permit allows the Permittee to Construct in that part of the Rights-of-Way described in such Construction Permit and to obstruct travel over the specified portion of the Rights-of-Way by placing Facilities described therein, to the extent and for the duration specified therein.
  - (2) A Construction Permit is valid only for the dates and the area of Rights-of-Way specified in the Construction Permit and shall in no event be valid for more than one hundred eighty (180) days from the construction start date.
  - (3) No Permittee may Construct in the Rights-of-Way beyond the date or dates specified in the Construction Permit unless such Permittee:
    - A. Submits a Supplementary Application for another Construction Permit before the expiration of the initial Construction Permit; and
    - B. Is granted a new Construction Permit or Construction Permit Extension.
  - (4) Original Construction Permits issued pursuant to this Section shall, when possible, be conspicuously displayed at all times at the indicated work site and shall be available for inspection by inspectors and authorized City personnel. If the original Construction Permit involves work conducted simultaneously at multiple locations, each location shall display a photocopy of the original Construction Permit. If the original Construction Permit is not conspicuously displayed at the indicated work site, then upon request, the original Construction Permit must be produced within twelve (12) hours or the first earliest Business Hour, whichever is later. For purposes of this Section, Business Hour shall mean the hours between 8 a.m. and 5 p.m. during a business day.
- (b) Construction Permit Applications.
- (1) Application for a Construction Permit, unless an Emergency, shall be made to the Director of Public Service no less than fourteen (14) business days prior to the requested start of Construction.
  - (2) All Construction Permit Applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
    - A. Credible evidence that the Applicant (where required) has been issued a Certificate of Registration or proof that the Applicant has written authority to apply for a Construction Permit on behalf of a party that has been issued a Certificate of Registration; and
    - B. Submission of a completed Construction Permit Application in the form required by the Director of Public Service, including, but not limited to, all required attachments, and scaled, dated drawings showing the location and area of the proposed project, number and location of street crossings, and the location of all then known existing and proposed Facilities of the Applicant or Provider within the proposed project area. All drawings, plans and specifications submitted with the Application shall comply with applicable technical codes, Rules and Regulations, or Design Guidelines where applicable, and be certified as to being in such compliance by trained technical personnel acceptable to the Director of Public Service. The City reserves the right, in circumstances that the Director of Public Service considers unique, complex or unusual, to request that certain submitted drawings, plans and specifications be accompanied by the certification of a registered licensed professional engineer; and
    - C. A City-approved traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the Ohio Manual of Uniform Traffic Control Devices, which is the uniform system of traffic control devices promulgated by the Ohio Department of Transportation pursuant to O.R.C. § 4511.09, to prevent injury or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and
    - D. If the Applicant wants to install new Facilities, evidence that the Right-of-Way is not Full and evidence that the Applicant has received an appropriate Permit and is adhering to the City's laws and Rules and Regulations; and
    - E. Unless otherwise prohibited by Law, if the Applicant is proposing an above ground installation on existing poles within the Rights-of-Way, the applicant shall provide credible information satisfactory to the City to sufficiently detail and identify:
      1. The size and height of the existing poles; and
      2. Based on the Facilities currently on the existing poles, the excess capacity currently available on such poles before installation of Applicant's Facilities; and
      3. Based on the Facilities currently on the existing poles, the excess capacity for like or similar Facilities that will exist on such poles after installation of Applicant's Facilities; and
    - F. Unless otherwise prohibited by Law, if the Applicant proposes to install new poles within the Rights-of-Way, the Applicant shall provide:
      1. Credible evidence satisfactory to the City that there is no excess capacity on existing poles or in existing underground systems; and
      2. Credible evidence to the City that it is not financially and/or technically practicable for the Applicant to make an underground installation or locate its facilities on existing poles; and
      3. The location, size, height, color, and material of the proposed poles; and
      4. Credible evidence satisfactory to the City that the Applicant will adhere to all the applicable laws concerning the installation of new poles.
    - G. If Applicant is proposing an underground installation in existing ducts or conduits within the Rights-of-Way, the Applicant shall provide credible information satisfactory to the City to sufficiently detail and identify:
      1. Based on the existing Facilities, the excess capacity for like or similar Facilities currently available in such ducts or conduits before installation of Applicant's Facilities; and
      2. Based on existing Facilities, the excess capacity for like or similar Facilities that will exist in such ducts or conduits after installation of Applicant's Facilities.
    - H. If Applicant is proposing an underground installation within new ducts or conduits to be constructed within the Rights-of-Way, the Applicant must provide credible information satisfactory to the City to sufficiently detail and identify:
      1. The location, depth, size, and quantity of proposed new ducts or conduits; and
      2. The excess capacity for like or similar equipment that will exist in such ducts or conduits after installation of Applicant's Facilities.
    - I. A preliminary Construction schedule and completion date; and
    - J. Payment of all money due to the City for:
      1. Permit Fees;
      2. Any loss, damage, or expense suffered by the City as a result of Applicant's prior Construction in the Rights-of-Way or any Emergency actions taken by the City;
      3. Any Certificate of Registration issued to the Applicant/Person whose Facilities are being Constructed; and
      4. Any other money due to the City from the Applicant/Person whose Facilities are being Constructed.
    - K. When a Construction Permit is requested for purposes of installing additional Systems or any part of a System, the posting of a bond, acceptable to the City and subject to this chapter, for the additional Systems or any part of a System is required.

- L. Upon request, the Director of Public Service may modify or waive the information requirements if they are not necessary in evaluating the Construction Permit application. The Director of Public Service may request applicable and pertinent additional information if it is necessary in evaluating the Construction Permit Application.
- (c) Issuance of Permit; Conditions.
- (1) If the City determines that the Applicant has satisfied the requirements of this chapter and the Construction Permit process, the Director of Public Service shall issue a Construction Permit subject to the provisions of subsection (c)(2) hereof.
  - (2) The City may impose reasonable conditions upon the issuance of the Construction Permit and the performance of the Permittee thereunder in order to protect the City's investment in the Right-of-Way, protect the public health, safety and welfare, to insure the structural integrity of the Rights-of-Way, to protect the property and safety of other users of the Rights-of-Way, or to minimize the disruption and inconvenience to the traveling public.
- (d) Construction Permit Fees.
- (1) The City shall collect a Construction Permit Fee as set forth in the Rules and Regulations to reimburse the City for the cost incurred by the City that is associated with receiving, reviewing, processing and granting (or denying) the Construction Permit and any oversight of the Construction Permit or the Construction work associated therewith. The Permittee shall remit payment to the City for the original invoice at least 10 days in advance of beginning Construction. Any Applicant who begins Construction without timely remitting such invoiced Construction Permit Fee amounts shall be subject to the penalties of this chapter, the imposition of any other legal or equitable remedies available to the City and the immediate revocation of any Certificate of Registration or Construction Permit having been issued.
  - (2) The City may, in addition to the costs listed in subsection (d)(1), include in the Construction Permit Fee the cost of the value of degradation and reduction in the useful life of the Rights-of-Way that will result from Construction that has taken place therein. "Degradation and the reduction in the useful life" for the purpose of this Section means the accelerated depreciation of the Rights-of-Way caused by Construction in or disturbance of the Rights-of-Way, resulting in the need to reconstruct or repair such Rights-of-Way earlier than would be required if the Construction did not occur.
  - (3) Except as otherwise provided herein, no future Construction Permits shall be issued to an Applicant without payment of all outstanding Construction Permit Fee invoices. The City shall be exempt from payment of Construction Permit Fees. Construction Permit Fees that were paid for a Permit that the City has revoked in accordance with this chapter are not refundable.
- (e) Joint Applications. Applicants are encouraged to submit joint Applications for Construction Permits to work in the Rights-of-Way at the same place and time. Joint Applicants shall have the ability to divide amongst themselves, in proportions the parties find appropriate, any applicable Construction Permit Fees.
- (f) Exceptions to Permit Requirements. The following shall be excluded from the requirements of Section 1192.16:
- (1) The repairing or improvement of streets or other public places under or by virtue of a contract with the City.
  - (2) The maintenance, planting or removal of trees and shrubs from within the Right-of-Way. (Ord. 53-2018. Passed 6-28-18.)

#### **1192.15 CONSTRUCTION, RELOCATION AND RESTORATION.**

- (a) Utility Engineering Study Required.
- (1) Prior to commencement of any initial Construction, extension, or relocation of Facilities in the Rights-of-Way, except for repair, maintenance or replacement with like Facilities or relocations requested or caused by a third party (excluding the City) or another Permittee, a Permittee shall conduct a utility engineering study on the proposed route of Construction expansion or relocation if requested by the Director of Public Service. Where such Construction and/or relocation is requested or caused by a third party, every Permittee located within the Rights-of-Way at issue or involved with the work shall use all Best Efforts to cooperate and assist any other Permittee or person who is directed by the City to perform the required utility engineering study. A utility engineering study consists of, but is not limited to, completion of the following tasks:
    - A. Secure all available "as-built" plans, plats and other location data indicating the existence and approximate location of all Facilities along the proposed Construction route.
    - B. Visibly survey and record the location and dimensions of any Facilities along the proposed Construction route, including, but not limited to, manholes, valve boxes, utility boxes, posts and visible street cut repairs.
    - C. Determine and record the presence and precise location of all underground facilities the Applicant or Person on whose behalf the Permit was applied for owns or controls in the Rights-of-Way along the proposed System route. Upon request of the Director of Public Service, a Permittee shall also record and identify the general location of all other Facilities in the Rights-of-Way along the proposed System route. For the purposes of this Section, general location shall mean the alignment of other Facilities in the Rights-of-Way, but shall not necessarily mean the depth of other Facilities in the Rights-of-Way.
    - D. Plot and incorporate the data obtained from completion of the tasks described in subsection (a)(1) A. to C. on the Construction Permittee's proposed System route maps, Construction plans, plan sheets or computer aided drafting and design (CADD) files, or other data files in a format compatible with that used by the City.
    - E. Where the proposed location of Facilities and the location of existing underground facilities appear to conflict on the plans drafted in accordance with subsection (a)(1)(4), Permittee has the option of either utilizing non-destructive digging methods, such as vacuum excavation, at the critical points identified to determine as precisely as possible, the horizontal, vertical and spatial position, composition, size and other specifications of the conflicting underground facilities, or re-designing the Construction plans to eliminate the apparent conflict. A Permittee shall not excavate more than a three (3) feet by three (3) feet square hole in the Rights-of-Way to complete this task.
    - F. Based on all of the data collected upon completion of the tasks described in this section, adjust the proposed System design to avoid the need to relocate other Underground Facilities.
  - (2) The Director of Public Service may modify the scope of the utility engineering study as necessary depending on the proposed Construction plans.
- (b) Copy to City. Upon completion of the tasks described in subsection (a) hereof, the Construction Permittee shall submit the proposed System route maps and Construction Plans, with the results of the utility engineering study, in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. The mapping data is required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the Provider's facilities in the Rights-of-Way. The Provider shall supply the mapping data on paper if the Director of Public Service determines that the format currently being used by the Provider is not capable of being read by the City.
- (c) Qualified Firm. All utility engineering studies conducted pursuant to this section shall be performed by the Permittee if in the discretion of the Director of Public Service the Construction Permittee is qualified to complete the project itself; alternatively, utility engineering studies shall be performed by a firm specializing in utility engineering that is approved by the City.
- (d) Cost of Study. The Permittee shall bear the cost of compliance with subsection (a) to (c) hereof.

(e) Construction Schedule. Unless otherwise provided for in this chapter or in the Rules and Regulations, or unless the Director of Public Service waives any of the requirements of this Section due to unique or unusual circumstances, a Permittee shall be required to submit a written Construction schedule to the City fourteen (14) business days before commencing any work in or about the Rights-of-Way, and shall further notify the City not less than two (2) business days in advance of any excavation in the Rights-of-Way. This Section shall apply to all situations with the exception of circumstances under Section 1192.16(d) (Emergency Situations).

(f) Location of Facilities.

(1) The placement of new Facilities and replacement of old Facilities, either above ground or underground, shall be completed in conformity with applicable laws and the City's Rules and Regulations.

(2) The City shall have the power to prohibit or limit the placement of new or additional Facilities within the Rights-of-Way if the Right-of-Way is Full. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the Rights-of-Way, but shall be guided primarily by considerations of the public health, safety and welfare, the condition of the Rights-of-Way, the time of year with respect to essential Utilities, the protection of existing Facilities in the Rights-of-Way, future City and County plans for public improvements, development projects which have been determined to be in the public interest and nondiscriminatory and competitively neutral treatment among Providers.

(g) Least Disruptive Technology. All Construction or maintenance of Facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the Rights-of-Way. Specifically, every Permittee when performing underground Construction, if technically and/or technologically feasible and not economically unreasonable, shall utilize Trenchless Technology, including, but not limited to, horizontal drilling, directional boring, and microtunneling. In addition, all cable, wire or fiber optic cable installed in the subsurface Rights-of-Way pursuant to this chapter may be required to be installed in conduit, and if so required, no cable, wire or fiber optic cable may be installed pursuant to this chapter using "direct bury" techniques.

(h) Special Exceptions.

(1) The City may grant a special exception to the requirements of subsections (f) and (g) hereof if a Permittee, upon application, demonstrates with written evidence that:

A. The exception will not create any threat to the City's investment or in the Rights-of-Way, the public health, safety or welfare.

B. Permittee demonstrates that the increased economic burden and the potential adverse impact on the Permittee's Construction schedule resulting from the strict enforcement of the requirement actually or effectively inhibits the ability of the Permittee to provide Services in the City.

C. The Permittee demonstrates that the requirement unreasonably discriminates against the Permittee in favor of another Person.

D. The requirements requested by the City herein create an unreasonable economic burden for the Permittee that outweighs any potential benefit to the City.

(i) Relocation of Facilities.

(1) A Provider shall as promptly as reasonably possible and at its own expense, permanently remove and relocate its Facilities in the Rights-of-Way whenever the City finds it necessary to request such removal and relocation. In instances where the City requests removal and/or relocation, the City shall waive all applicable Construction Permit Fees. Upon removal and/or relocation, the Provider shall restore the Rights-of-Way to the same or better condition it was in prior to said removal or relocation. If existing poles are required to be removed and/or relocated, then the existing poles will be replaced with poles of the same or substantially similar size, or smaller. In accordance with law, the Director of Public Service may request relocation and/or removal in order to prevent unreasonable interference by the Provider's Facilities with:

A. A public improvement undertaken or approved by the City.

B. The City's investment in the Right-of-Way.

C. When the public health, safety, and welfare requires it, or when necessary to prevent interference with the safety and convenience of ordinary travel over the Rights-of-Way.

D. The sale, conveyance, vacation, or narrowing of all or any part of a Right-of-Way.

(2) Notwithstanding the foregoing, a Provider who has Facilities in the Rights-of-Way subject to a vacation or narrowing that is not required for the purposes of the City, shall have a permanent easement in such vacated portion or excess portion in conformity with O.R.C. 723.041.

(3) If, in the reasonable judgment of the City, a Provider fails to commence removal and/or relocation of its Facilities, as designated by the City, within thirty (30) days after the City's removal order, or if a Provider fails to substantially complete such removal, including all associated repair of the Rights-of-Way of the City, within twelve (12) months thereafter, then, to the extent consistent with applicable law, the City shall have the right to:

A. Declare that all rights, title and interest to the Facilities belong to the City with all rights of ownership, including, but not limited to, the right to connect and use the Facilities or to effect a transfer of all right, title and interest in the Facilities to another Person for operation; or

B. Authorize removal of the Facilities installed by the Provider in, on, over or under the Rights-of-Way of the City at Provider's cost and expense, by another Person; however, the City shall have no liability for any damage caused by such action and the Provider shall be liable to the City for all reasonable costs incurred by the City in such action; and

C. To the extent consistent with applicable Law, any portion of the Provider's Facilities in, on, over or under the Rights-of-Way of the City designated by the City for removal and not timely removed by the Provider shall belong to and become the property of the City without payment to the Provider, and the Provider shall execute and deliver such documents, as the City shall request, in form and substance acceptable to the City, to evidence such ownership by the City.

(j) Pre-Excavation Facilities Location.

(1) Before the start date of any Rights-of-Way excavation, each Provider who has Facilities located in the area to be excavated shall, to the best of its ability, be responsible to mark the horizontal and approximate vertical placement of all its Facilities.

(2) All Providers shall notify and work closely with the excavation contractor in an effort to establish the exact location of its Facilities and the best procedure for excavation.

(k) Rights-of-Way Restoration.

(1) The work to be done under the Permit, and the Restoration of the Rights-of-Way as required herein, weather permitting, must be completed within the dates specified in the Permit. In addition to its own work, the Permittee must restore the general area of the work, and the surrounding areas, including trench backfill, paving and its foundations in accordance with the Code and City Rules and Regulations. If a Permittee is unable to timely complete the Restoration of Rights-of-Way due to unreasonable inclement weather conditions, the Permittee shall complete the Restoration of the Rights-of-Way as soon as weather conditions make it possible to do so and upon said completion notify the City.

(2) In approving an Application for a Construction Permit, the City may have the Permittee restore the Rights-of-Way or the City may restore the Rights-of-Way itself at the Permittee's cost if the Permittee has in the past not abided by requirements of this chapter.

- (3) If the City chooses to allow Permittee to restore the Rights-of- Way, the Permittee shall, at the time of Application for a Construction Permit, post a Construction Bond in an amount determined by the City to be sufficient to cover the cost of restoring the Rights-of-Way to its approximate pre-excavation condition. If, twelve (12) months after completion of the Restoration of the Rights-of-Way, the City determines that the Rights-of-Way have been properly restored, the surety on the Construction Bond shall be released.
  - (4) The Permittee shall perform the work according to the standards and with the materials specified by the City. The City shall have the authority to prescribe the manner and extent of the Restoration, and may do so in written procedures of general application or on a case-by-case basis. The City in exercising this authority shall be guided by the following standards and considerations: the number, size, depth and duration of the excavations, disruptions or damage to the Rights-of-Way; the traffic volume carried by the Rights-of-Way; the character of the neighborhood surrounding the Rights-of-Way; the pre- excavation condition of the Rights-of-Way; the remaining life-expectancy of the Rights-of-Way affected by the excavation; whether the relative cost of the method of Restoration to the Permittee is in reasonable balance with the prevention of an accelerated depreciation of the Rights-of-Way that would otherwise result from the excavation, disturbance or damage to the Rights-of-Way; and the likelihood that the particular method of Restoration would be effective in slowing the depreciation of the Rights-of-Way that would otherwise take place. Methods of Restoration may include, but are not limited to, patching the affected area, replacement of the Rights- of-Way base at the affected area, and in the most severe cases, milling, overlay and/or street reconstruction of the entire area of the Rights-of-Way affected by the work.
  - (5) By restoring the Rights-of-Way itself, the Permittee guarantees its work and shall maintain it for twelve (12) months following its completion. During this twelve (12) month period, it shall, upon notification from the Department of Public Service, correct all Restoration work to the extent necessary using the method required by the Department of Public Service. Weather permitting, said work shall be completed within five (5) calendar days of the receipt of the notice from the Department of Public Service, unless otherwise extended by the Department of Public Service.
  - (6) If the Permittee fails to restore the Rights-of-Way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all repairs required by the City, the City, at its option, may do such work. In that event, the Permittee shall pay to the City, within thirty (30) days of invoicing, the Restoration cost of restoring the Rights-of-Way and any other costs incurred by the City. Upon failure to pay, the City may call upon any bond or letter of credit posted by Permittee and/or pursue any and all legal and equitable remedies.
  - (7) If the work to be done under the Permit is being done at the same location and the same period of time as work by the City and/or another Permittee(s), then the Director of Public Service may reasonably apportion the Restoration responsibility among the City, Providers and/or other Persons.
- (l) Damage to Other Facilities.
- (1) In the case of an Emergency, and if possible after reasonable efforts to contact the Provider seeking a timely response, when the City performs work in the Rights-of-Way and finds it necessary to maintain, support, or move a Provider's Facilities to protect those Facilities, the costs associated therewith will be billed to that Provider and shall be paid within thirty (30) days from the date of billing. Upon failure to pay, the City may pursue all legal and equitable remedies or the City may call upon any bond or letter of credit posted by the Permittee and pursue any and all legal or equitable remedies. Each Provider shall be responsible for the cost of repairing any damage caused by its Facilities to the Facilities of another Provider during the City's response to an Emergency.
  - (2) Each Provider shall be responsible for the cost of repairing any City-owned Facilities in the Rights-of-Way that the Provider or its Facilities damage.
- (m) Rights-of-Way Vacation. If the City sells or otherwise transfers a Right-of-Way that contains the Facilities of a Provider, such sale or transfer shall be subject to any existing easements of record and any easements required pursuant to O.R.C. 723.041.
- (n) Installation Requirements. The excavation, backfilling, Restoration, and all other work performed in the Rights-of-Way shall be performed in conformance with all applicable laws, City Rules and Regulations, other standards as may be promulgated by the Director of Public Service.
- (o) Inspection. When the Construction under any Permit hereunder is completed, the Permittee shall notify the Department of Public Service.
- (1) The Permittee shall make the Construction site available to the Inspector and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the Construction.
  - (2) At the time of inspection, the Inspector may order the immediate cessation of any work that poses a serious threat to the life, health, safety or well-being of the public, violates any law or that violates the term and conditions of the Permit and/or this chapter. The City may inspect the work; however, the failure of the City to inspect the work does not alleviate the responsibility of the Permittee to complete the work in accordance with the approved Permit and the requirements of this chapter.
  - (3) The Inspector may issue an order to the Permittee for any work that does not conform to the Permit and/or applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the Permit. The order may be served on the Permittee as provided in Section 1192.19(d). An order may be appealed to the Director of Public Service. The decision of the Director of Public Service may be appealed to the Mayor whose decision shall be final. If not appealed, within ten (10) days after issuance of the order, the Provider shall present proof to the Director of Public Service that the violation has been corrected. If such proof has not been presented within the required time, the Director of Public Service may revoke the Permit.
- (p) Other Obligations.
- (1) Obtaining a Construction Permit does not relieve Permittee of its duty to obtain all other necessary Permits, licenses, and authority and to pay all fees required by any other City, county, state or federal laws.
  - (2) Permittee shall comply with all requirements of all laws, including the Ohio Utility Protection Service.
  - (3) Permittee shall perform all work in conformance with all applicable laws and standards, and is responsible for all work done in the Rights-of- Way pursuant to its Permit, regardless of who performs the work.
  - (4) No Rights-of-Way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an Emergency as outlined in Section 1192.16(d).
  - (5) Permittee shall not obstruct a Right-of-Way so as to interfere with the natural free and clear passage of water through the gutters or other waterways. The Director of Public Service may waive this requirement if it is technically or economically unreasonable in the circumstances.
- (q) Undergrounding Required. Any owner of property abutting a street or alley where Service Facilities are now located underground and where the Service connection is at the property line, shall install or cause others to install underground any Service delivery infrastructure from the property line to the buildings or other structures on such property to which such Service is supplied. Where not otherwise required to be placed underground by this chapter, a Provider shall locate Facilities underground at the request of an adjacent property owner, provided that such placement of Facilities underground is consistent with the Provider's normal construction and operating standards and that the additional costs of such undergrounding over the normal aerial or above ground placement costs of identical Facilities are borne directly by the property owner making the request. A Provider, under any circumstance shall, upon the reasonable request of the City, always use Best Efforts to place Facilities underground. Where technically possible and not economically

unreasonable or unsafe (based upon the technology employed and Facilities installed), all Facilities to be installed by a Provider under the Right-of-Way shall be installed in conduit. (Ord. 53-2018. Passed 6-28-18.)

#### **1192.16 ENFORCEMENT OF PERMIT OBLIGATION.**

- (a) Mandatory Denial of Permit. Except in the case of an Emergency, no Permit will be granted:
- (1) To any Person who has not yet made an Application or who is occupying any Right-of-Way without a valid Certificate of Registration; or
  - (2) To any Person who has outstanding debt owed to the City unless payment in full has been placed in an escrow account approved by the City Director of Finance and the Law Director; or
  - (3) To any Person as to whom there exists grounds for the revocation of a Permit in accordance with the provisions contained herein; or
  - (4) If, in the discretion of the Director of Public Service, the issuance of a Permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The Director of Public Service, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the Rights-of-Way, and by considerations relating to the public health, safety and welfare and/or the City's investment in the Right-of-Way.
- (b) Permissive Denial of Permit. The Director of Public Service may deny a Permit in order to protect the public health, safety and welfare, and/or protect the City's investment in the Right-of-Way to prevent interference with the safety and convenience of ordinary travel over the Rights-of-Way, or when necessary to protect the Rights-of-Way and its users.
- (1) The Director of Public Service, in his/her discretion, may consider one or more of the following factors:
    - A. The extent to which Rights-of-Way space where the Permit is sought is available; and/or
    - B. The competing demands for the particular space in the Rights-of-Way; and/or
    - C. The availability of other locations in the Rights-of-Way or in other Rights-of-Way for the proposed Facilities; and/or
    - D. The applicability of this chapter or other regulations of the Rights-of-Way that affect location of Facilities in the Rights-of-Way; and/or
    - E. The degree of compliance of the Provider with the terms and conditions of its Certificate of Registration, this chapter, and other applicable ordinances and regulations; and/or
    - F. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the Rights-of-Way; and/or
    - G. The condition and age of the Rights-of-Way, and whether and when it is scheduled for total or partial re-construction; and/or
    - H. The balancing of the costs of disruption to the public and damage to the Rights-of-Way, against the benefits to that part of the public served by the expansion into additional parts of the Rights-of-Way; and/or
    - I. Whether such Applicant or its agent has failed within the past three (3) years to comply, or is presently not in full compliance with, the requirements of this chapter, or, if applicable, any other law.
  - (2) Under no circumstances will open cutting take place on any street except where:
    - A. An Emergency situation constitutes that an open cut is necessary; and/or
    - B. Vital services to resident(s) or business(es) are needed or have been cut off and there is no reasonable alternative (such as jacking or boring) in supplying or restoring such services; and/or
    - C. The Director of Public Service determines it is in the best interests of the City that such an open cut take place.
- (c) Discretionary Issuance of Permit.
- (1) Notwithstanding the provisions of subsection (a)(1) and (a)(2), the Director of Public Service may issue a Permit in any case in which the Permit is necessary;
    - A. To prevent substantial economic hardship to a customer of the Permit Applicant, if established by credible evidence satisfactory to the City; or
    - B. To allow such customer to improve its Service; or
    - C. To allow a new economic development project to be granted a Permit under this section.
  - (2) To be granted a Permit under this section, the Permit Applicant must not have had knowledge of the hardship, the plans for improvement of Service, or the development project when it was required to submit its list of next year projects.
- (d) Work Done Without A Permit in Emergency Situations.
- (1) Each Provider shall, as soon as is practicable, immediately notify the Director of Public Service of any event regarding its Facilities which it considers to be an Emergency. The Provider may proceed to take whatever actions are necessary in order to respond to the Emergency. Within five (5) business days, unless otherwise extended by the Director of Public Service, after the occurrence or discovery of the Emergency (whichever is later), the Provider shall apply for the necessary Permits, pay the fees associated therewith or have those fees attributed to its quarterly invoice balance in accordance with section Q(4) and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for any and all actions taken in response to the Emergency. In the event that the City becomes aware of an Emergency regarding a Provider's Facilities, the City may use Best Efforts to contact the Provider or the System Representative of each Provider affected, or potentially affected, by the Emergency. In any event, the City may take whatever action it deems necessary in order to respond to the Emergency, the cost of which shall be borne by the Provider whose Facilities caused the Emergency.
  - (2) Except in the case of an Emergency, any Provider who Constructs in, on, above, within, over, below or through a Rights-of-Way without a valid Permit must subsequently obtain a Permit, pay double the calculated fee for said Permit, pay double all the other fees required by the Code, deposit with the City the fees necessary to correct any damage to the Rights-of-Way and comply with all of the requirements of this chapter.
- (e) Revocation of Permits.
- (1) Permittees hold Permits issued pursuant to this chapter as a privilege and not as a right. The City reserves its right, as provided herein, to revoke any Permit, without refunding any fees, in the event of a failure of the Permittee to comply with the terms and conditions of any law, ordinance, rule or regulation, or Design Guidelines where applicable, or any provision or condition of the Permit, including, but not limited to the following:
    - A. The violation of any provision or condition of the Permit; or
    - B. An evasion or attempt to evade any provision or condition of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens; or
    - C. Any misrepresentation of fact in the Application for a Permit; or
    - D. The failure to maintain the required bonds and/or insurance; or
    - E. The failure to obtain and/or maintain, when required, a Certificate of Registration; or
    - F. The failure to complete the Construction in a timely manner; or
    - G. The failure to correct a condition of an order issued.
  - (2) If the Director of Public Service determines that the Permittee has not complied with a term or condition of any law, ordinance, rule or regulation, or any condition of the Permit, the Director of Public Service shall serve a written demand upon the Permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the Permit. The Director of Public Service may also, in his/ her discretion, place additional or revised



conditions on the Permit.

- (3) By the close of the next business day following receipt of notification of the violation, Permittee shall contact the Director of Public Service with a plan, acceptable to the Director of Public Service, for its correction. Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the Permit.
- (4) If a Permittee commits a second substantial default as outlined above, Permittee's Permit will automatically be revoked and the Permittee will not be allowed further Permits for up to and including one (1) full year from the date that the Permit was revoked, except for Emergency repairs.
- (5) If a Permit is revoked, the Permittee shall also reimburse the City for the City's reasonable costs, including Restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation. (Ord. 53-2018. Passed 6-28-18.)

#### **1192.17 PERFORMANCE SECURITY.**

(a) Required Bond. Upon issuance of a Certificate of Registration, and prior to the commencement of any Construction, and continuously thereafter, a Provider shall deposit with the Director of Public Service and maintain an irrevocable, unconditional letter of credit or surety bond in an amount determined by the Director of Public Service to be appropriate based upon fair and reasonable criteria. The full amount of the letter of credit or surety bond shall remain in full force and effect throughout the terms and conditions of this chapter and/or until any necessary site restoration is completed to restore the site to a condition comparable or better to that which existed prior to the issuance of Certificate of Registration. Unless a Construction default, problem, or deficiency involves an Emergency or endangers the safety of the general public, the Director of Public Service shall make all reasonable efforts to allow a Provider a period of five (5) calendar days after sending notification in writing to correct or repair any default, problem or deficiency prior to Director of Public Service' attachment of the letter of credit or surety bond. Upon attachment, written notice shall be provided to the Provider by the Director of Public Service.

(b) Purposes.

- (1) The letter of credit or surety bond required by this section shall serve as security for:
    - A. The faithful performance by the Permittee or Provider of all terms, conditions and obligations of this chapter; and
    - B. Any expenditure, damage, or loss incurred by the City occasioned by the Permittee or Provider's violation of this chapter or its failure to comply with all rules, regulations, orders, Permits and other directives of the City issued pursuant to this chapter; and
    - C. The payment of all compensation due to the City, including Permit Fees; and
    - D. The payment of premiums (if any) for the liability insurance required pursuant to this chapter; and
    - E. The removal of Facilities from the Rights-of-Way pursuant to this chapter; and
    - F. The payment to the City of any amounts for which the Permittee or Provider is liable that are not paid by its insurance or other surety; and
    - G. The payment of any other amounts which become due to the City pursuant to this chapter or law.
- (Ord. 53-2018. Passed 6-28-18.)

#### **1192.18 INDEMNIFICATION AND LIABILITY.**

(a) City Does Not Accept Liability.

- (1) By reason of the acceptance of an Application, the grant of a Permit or the issuance of a Certificate of Registration, the City does not assume any liability:
  - A. For injuries to Persons, damage to property, or loss of Service claims; or
  - B. For claims or penalties of any sort resulting from the installation, presence, maintenance or operation of Facilities.

(b) Indemnification.

- (1) By applying for and being issued a Certificate of Registration with the City a Provider is required, or by accepting a Permit a Permittee is required to defend, indemnify, and hold harmless the City's agents, elected officials, officers, employees, volunteers and subcontractors from all costs, liabilities, claims, and suits for damages of any kind arising out of the Construction, presence, installation, maintenance, repair or operation of its Facilities, or out of any activity undertaken in or near a Right-of-Way, whether any act or omission complained of is authorized, allowed, or prohibited by a Permit, unless the act or omission is due to the City's negligence or willful acts. A Provider or Permittee shall not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City's agents, elected officials, officers, employees, volunteers, and subcontractors for any claim nor for any award arising out of the presence, installation, maintenance or operation of its Facilities, or any activity undertaken in or near a Right-of-Way, whether the act or omission complained of is authorized, allowed or prohibited by a Permit. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Provider, Permittee or to the City; and the Provider or Permittee, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. Any and all exercise of the above shall be consistent with, but not limited to, the following:
  - A. To the fullest extent permitted by law, all Providers and Permittees shall, at their sole cost and expense, fully indemnify, defend and hold harmless the City, its elected officials, agents, officers, employees, volunteers and subcontractors from and against any and all lawsuits, claims (including without limitation workers' compensation claims against the City or others), causes of actions, actions, liability, and judgments for injury or damages (including, but not limited to, expenses for reasonable legal fees and disbursements assumed by the City in connection therewith), unless the act or omission is due to the City's negligence or willful acts; and
    1. Persons or property, in any way arising out of or through the acts or omissions of Provider or Permittee, its subcontractors, agents or employees attributable to the occupation by the Provider or Permittee of the Rights-of-Way, to which Provider's or Permittee's negligence shall in any way contribute, and regardless of whether the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury or damage; and
    2. Arising out of any claim for invasion of the right of privacy, for defamation of person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any person, firm and corporation by the Provider, but excluding claims arising out of or related to the City's actions; and
    3. Arising out of Provider or Permittee's failure to comply with the provisions of law applicable to Provider or Permittee in its business hereunder.
- (2) The foregoing indemnification is conditioned upon the City:
  - A. Giving Provider or Permittee prompt notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought; and
  - B. Affording the Provider or Permittee the opportunity to participate in any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and

C. Cooperate in the defense of such claim and making available to the Provider or Permittee all pertinent information under the City's control.

(3) The City shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, and the Provider or Permittee shall pay all reasonable fees and expenses of such separate counsel if employed.

(Ord. 53-2018. Passed 6-28-18.)

#### **1192.19 GENERAL PROVISIONS.**

(a) Non-exclusive Remedy. The remedies provided in this chapter are not exclusive or in lieu of other rights and remedies that the City may have at law or in equity. The City is hereby authorized at any time to seek legal and equitable relief for actual or threatened injury to the Rights-of-Way, including damages to the Rights-of-Way, whether caused by a violation of any of the provisions of this chapter or other provisions of the City Code of Ordinances.

(b) Severability. If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any Permit, right or any portions of this section are illegal or unenforceable, then any such Permit or right granted or deemed to exist hereunder shall be considered as a revocable Permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable Permit shall be the same requirements and conditions as set forth in the Permit, right or registration, respectively, except for conditions relating to the term of the Permit and the right of termination. If a Permit or right shall be considered a revocable Permit as provided herein, the Permittee must acknowledge the authority of the City to issue such revocable Permit and the power to revoke it.

(c) Reservation of Regulatory and Police Powers. The City, by the granting of a Permit or by issuing a Certificate of Registration pursuant to this chapter, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the City under the Constitution and laws of the United States, State of Ohio and under the Charter of the City to regulate the use of the Rights-of-Way. The Permittee by its acceptance of a Permit, or Provider by applying for and being issued a Certificate of Registration, is deemed to acknowledge that all lawful powers and rights, regulatory power, or police power, or otherwise as now are or the same as may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A Permittee or Provider is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws and ordinances enacted by the City pursuant to such powers.

(d) Method of Service. Any notice or order of the Director of Public Service or Mayor shall be deemed to be properly served if a copy thereof is:

- (1) Delivered personally; or
- (2) Successfully transmitted via facsimile transmission to the last known fax number of the person to be served; or
- (3) Successfully transmitted via electronic mail to the last known e-mail address of the person to be served; or
- (4) Left at the usual place of business of the person to whom it is to be served upon and with someone who is eighteen (18) years of age or older; or
- (5) Sent by certified, pre-posted U.S. Mail to the last known address; or
- (6) If the notice is attempted to be served by certified, pre-posted U.S. Mail and then returned showing that the letter was not delivered, or the certified letter is not returned within fourteen (14) days after the date of mailing, then notice may be sent by regular, pre-posted, first-class U.S. Mail; or
- (7) If the notice is attempted to be served by regular, first class U.S. Mail, postage prepaid, and the letter is then returned showing that the letter was not delivered, or is not returned within fourteen (14) days after the date of mailing, then notice shall be posted in a conspicuous place in or about the structure, building, premises or property affected by such notice.

(e) Applies to All Providers. This chapter shall apply to all Providers and all Permittees unless expressly exempted.

(f) Police Powers. All Persons' rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. All Persons shall comply with all applicable laws enacted by the City pursuant to its police powers. In particular, all Persons shall comply with City zoning and other land use requirements pertaining to the placement and specifications of Facilities, unless otherwise prohibited by Law.

(g) Compliance. No Person shall be relieved of its obligation to comply with any of the provisions of this chapter by reason of any failure of the City to enforce prompt compliance.

(h) Foreclosure and Receivership.

- (1) Upon the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against any Provider and/or Permittee, or any action for foreclosure or other judicial sale of the Provider and/or Permittee Facilities located within the Rights-of-Way, the Provider and/or Permittee shall so notify the Director of Public Service within fourteen (14) calendar days thereof and the Provider and/or Permittee's Certificate of Registration or Permit (as applicable) shall be deemed void and of no further force and effect.
- (2) The City shall have the right to revoke any Certificate of Registration or Permit granted pursuant to this chapter, subject to any applicable provisions of law, including the Bankruptcy Code, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Provider and/or Permittee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days or unless:
  - A. Within one hundred and twenty (120) days after election or appointment, such receiver or trustee shall have fully complied with all the provisions of the relevant Certificate of Registration, any outstanding Permit, this chapter, and remedied all defaults thereunder; and
  - B. Said receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by a court having jurisdiction over the Facilities, whereby such receiver or trustee assumes and agrees to be bound by each and every provisions of the relevant Certificate of Registration, Permit and this chapter.

(i) Force Majeure. In the event any Person's performance of any of the terms, conditions or obligations required by this chapter is prevented by a cause or event not within such Person's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a Person shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

(j) Continuing Obligation and Holdover. In the event a Provider or Permittee continues to operate all or any part of the Facilities after the termination, lapse, or revocation of a Certificate of Registration, such Provider or Permittee shall continue to comply with all applicable provisions of this chapter and other laws throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Certificate of Registration, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution. Any conflict between the issuance of a Certificate of Registration or of a Permit and any other present or future lawful

exercise of the City's regulatory or police powers shall be resolved in favor of the latter.

(k) Appeals. All appeals provided for by this chapter and any notification to the City required by this chapter shall be in writing and sent via certified U.S. Mail to the Mayor or Director of Public Service as specified in this chapter.

(l) City Facilities. As part of City required standards, wherever Rights-of-Way are under Construction, if deemed advisable and practicable by the Director of Public Service, the City may install all such Facilities deemed necessary to accommodate future Provider needs. Any such installed Facilities shall be City property and may be conveyed to any Person under such terms and conditions as are deemed advisable by the Mayor.

(Ord. 53-2018. Passed 6-28-18.)

#### **1192.20 PENALTIES.**

(a) In addition to any other penalties set forth in this chapter and the remedy of specific performance which may be enforced in a court of competent jurisdiction, the following penalties shall apply:

- (1) For failure to comply with any other provision of this chapter, the penalty shall be a civil forfeiture, payable to the City, in an amount up to \$500 per day for each violation. In addition, for failure to timely comply with a notice by the Director of Public Service to remove or rearrange Facilities pursuant to Section 1192.05(d), an additional civil forfeiture equal to any costs incurred by the City as a result of such failure, including but not limited to any penalties or liquidated damages charged the City by its contractors occasioned thereby, shall be imposed.
- (2) Any Person who fails to pay any forfeiture imposed pursuant to Chapter 1199 shall be guilty of a misdemeanor as provided therein. Each day such violation continues shall be deemed a separate offense.

(Ord. 53-2018. Passed 6-28-18.)

### **CHAPTER 1193**

#### **Wireless Communications Towers and Antennae**

##### **1193.01 Definitions.**

##### **1193.02 General.**

##### **1193.03 Nonresidential districts.**

##### **1193.04 Residential districts.**

##### **1193.05 Criteria for conditional use.**

#### **CROSS REFERENCES**

Small cell facilities and wireless support structure within the Right of Way - see P. & Z. Ch. 1192

#### **1193.01 DEFINITIONS.**

- (a) "Co-location" means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.
  - (b) "Lattice tower" means a support structure constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top.
  - (c) "Monopole" means a support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.
  - (d) "Open space" means land devoted to conservation or recreational purposes and/or land designated by a municipality to remain undeveloped (may be specified on a zoning map).
  - (e) "Telecommunication" means the technology which enables information to be exchanged through the transmission of voice, video, or data signals by means of electrical or electromagnetic systems.
  - (f) "Wireless telecommunications antenna" means the physical device through which electromagnetic, wireless telecommunications signals authorized by the Federal Communications Commission are transmitted or received. Antennas used by amateur radio operators are excluded from this definition.
  - (g) "Wireless telecommunications equipment shelter" means the structure in which the electronic receiving and relay equipment for a wireless telecommunications facility is housed.
  - (h) "Wireless telecommunications facility" means a facility consisting of the equipment and structures involved in receiving telecommunications or radio signals from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.
  - (i) "Wireless telecommunications tower" means a structure intended to support equipment used to transmit and/or receive telecommunications signals including monopoles, guyed and lattice construction steel structures.
- (Ord. 89-1997. Passed 12-11-97.)

#### **1193.02 GENERAL.**

The following requirements apply to all wireless telecommunications facilities regardless of the zoning district in which they are to be located. These general standards are to be supplemented with the specific regulations for nonresidential and residential districts as set forth in Sections 1193.03 and 1193.04 which follow.

- (a) When the proposed wireless telecommunications facility is to include a new tower, a plot plan at a scale of not less than one inch is equal to 100 feet shall be submitted. This plot plan shall indicate all building uses within 300 feet of the proposed facility. Aerial photos and/or renderings shall augment the plot plan.
- (b) The location of the tower and equipment shelter shall comply with all natural resource protection standards established in the Zoning Code, including those for floodplain, wetlands and steep slopes.
- (c) Security fencing eight feet in height shall surround the tower, equipment shelter and any guy wires, either completely or individually as determined by the Planning and Zoning Commission.
- (d) The following buffer plantings may be located around the perimeter of the security fence as deemed appropriate by the Planning and Zoning Commission:
  - (1) An evergreen screen shall be planted that consists of either a hedge, planted three feet on center maximum, or a row of evergreen trees planted five feet on center maximum.
- (e) Existing vegetation (trees and shrubs) shall be preserved to the maximum extent possible.

- (f) Any applicant requesting permission to install a new tower shall provide evidence of written contact with all wireless service providers who supply service within a quarter mile radius of the proposed facility. The applicant shall inquire about potential co-location opportunities at all technically feasible locations. The contacted providers shall be requested to respond in writing to the inquiry within thirty days. The applicant's letter(s) as well as response(s) shall be presented to the Planning and Zoning Commission as a means of demonstrating the need for a new tower.
  - (g) No wireless telecommunications facility shall be permitted within the Design Control District defined in Chapter 1175.
  - (h) The tower shall be painted a non-contrasting gray or similar color minimizing its visibility, unless otherwise required by the Federal Communications Commission (FCC) or Federal Aviation Administration (FAA).
  - (i) No advertising is permitted anywhere on the facility, with the exception of identification signage.
  - (j) All providers utilizing towers shall present a report to the Building and Zoning Inspector notifying the Inspector of any tower facility located in the Municipality whose use will be discontinued and the date this use will cease. If at any time the use of the facility is discontinued for 180 days, the Building and Zoning Inspector may declare the facility abandoned. (This excludes any dormancy period between construction and the initial use of the facility.) The facility's owner/operator will receive written notice from the Building and Zoning Inspector and instructed to either reactivate the facility's use within 180 days, or dismantle and remove the facility. If reactivation or dismantling does not occur, the Municipality will remove or will contract to have removed the facility and assess the owner/operator the costs.
  - (k) The owner or operator shall be required as a condition of issuance of a permit to post a cash or surety bond acceptable to the Director of Law of not less than one hundred dollars (\$100.00) per vertical foot from natural grade of the wireless communication tower which bond shall insure that an abandoned, obsolete or destroyed wireless communication antenna or tower shall be removed within six months of cessation of use and abandonment.
  - (l) No tower under 150 feet shall be artificially lighted except to assure safety or as required by the FAA. Any tower between 150 and 200 feet in height shall follow safety marking and obstruction lighting as prescribed by the FAA. Security lighting around the equipment shelter is permitted. No strobe lighting is permitted unless required by the FAA.
  - (m) "No Trespassing" signs shall be posted around the facility with a telephone number of who to contact in the event of an emergency.
  - (n) Applicants will provide evidence of legal access to the tower site thereby maintaining this access regardless of other developments that may take place on the site.
  - (o) A Conditional Use Permit must be approved by the City Planning and Zoning Commission and Council with a subsequent Building Permit issued by the Building and Zoning Inspector. Co-location of antennas on a single tower, antennas attached to existing structures/buildings, towers located in industrial districts, or replacement towers to be constructed at the site of a current tower are permitted uses and will not be subject to the Conditional use permitting process.
  - (p) Regular scheduled maintenance shall be conducted on weekdays from 8:00 a.m. to 5:00 p.m. in all districts. The City shall be notified when emergency maintenance is required.
  - (q) Any decision to deny a request to place, construct or modify a wireless telecommunications antenna and/or tower shall be in writing and supported by evidence contained in a written record of the proceedings of the Planning and Zoning Commission and Council.
  - (r) Underground equipment shelters are encouraged, especially in nonindustrial districts, and may be requested by the Planning and Zoning Commission and Council.
  - (s) Any wireless telecommunications facility built for or by the City for the primary purpose of police, fire, and emergency communications shall be considered an essential service within the meaning of Section 1193.09 of the Codified Ordinances.
- (Ord. 89-1997. Passed 12-11-97.)

### **1193.03 NONRESIDENTIAL DISTRICTS.**

Wireless telecommunications facilities proposed for Commercial-3, Commercial-4, Commercial-5, and Industrial-1 districts are subject to the following conditions:

- (a) Sole Use on a Lot. A wireless telecommunications facility is permitted as a sole use on a lot subject to the following:

- (1) Minimum lot size allowable for the district.
- (2) Minimum yard requirements.

A. Tower. The minimum distance to any single-family or multi-family residential use or district lot line shall be equal to the vertical height of the wireless telecommunications tower plus 50 feet.

B. Equipment Shelter. Must comply with minimum setbacks

- (3) Maximum height.

A. Tower. 200 feet (includes antenna)

B. Equipment Shelter. Must comply with maximum building height for the district.

- (4) Maximum size of equipment shelter.

A. 300 square feet for a single shelter, or, if there is more than one, 750 total square feet.

- (b) Combined with Another Use. A wireless telecommunications facility is permitted on a property with an existing use subject to the following conditions:

- (1) The existing use on the property may be any permitted use in the district or any lawful nonconforming use, and need not be affiliated with the wireless telecommunications provider. The wireless telecommunications facility will not be considered an addition to the structure or value of a nonconforming use.
- (2) The wireless telecommunications facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance (except during construction or an emergency).
- (3) Minimum lot area: the minimum lot area shall be the area needed to accommodate the tower (and guy wires, if used), the equipment shelter, security fencing and buffer planting.
- (4) Minimum yard requirements:
  - A. Tower. The minimum distance to any single-family or multi-family residential use or district lot line shall be equal to the vertical height of the wireless telecommunications tower plus 50 feet.

- B. Equipment Shelter. Shall comply with the minimum setback requirements for the primary lot.
  - (5) Access: The service access to the equipment shelter shall, whenever feasible, be provided along the circulation driveways of the existing use.
  - (6) Maximum height:
    - A. Tower. 200 feet (includes antenna)
    - B. Equipment Shelter. Must comply with maximum building height for the district.
  - (7) Maximum size of equipment shelter: 300 square feet for a single shelter, or, if there is more than one, 750 square feet.
  - (c) Combined With an Existing Structure. Where possible an antenna for a wireless telecommunications facility shall be attached to an existing structure or building subject to the following conditions:
    - (1) Maximum height: 20 feet or 20% of the building height above the existing building or structure, whichever is greater.
    - (2) If the applicant proposes to locate the telecommunications equipment in a separate shelter (not located on, or attached to, the building), the shelter shall comply with the following:
      - A. The minimum setback requirements for the subject zoning district.
      - B. A buffer yard may be planted in accordance with Section 1193.02(D).
      - C. Vehicular access to the shelter shall not interfere with the parking or vehicular circulation on the site for the principal use.
      - D. The maximum size of the equipment shelter shall not exceed 300 square feet, or, if there is more than one, 750 total square feet.
- (Ord. 89-1997. Passed 12-11-97.)

#### 1193.04 RESIDENTIAL DISTRICTS.

Wireless telecommunications facilities that include towers are not permitted in residential districts with the exception of placement on any property with an institutional use (e.g., church, park, library, municipal/government, hospital, school, utility) located in this district. However, antennas attached to existing buildings or structures are permitted. In applying for a permit in any residential district, the applicant must present substantial evidence as to why it is not technically feasible to locate in a more appropriate nonresidential zone. Once those efforts have been exhausted, a wireless telecommunications facility may be located in a residential district subject to the following conditions:

- (a) General. The wireless telecommunications facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance. This shall apply to (b) and (c) below.
  - (b) Combined with a nonresidential use. An antenna may be attached to a nonresidential building or structure that is a permitted use in the district, including, but not limited to, a church, a municipal or governmental building or facility, agricultural building, and a building or structure owned by a utility. The following conditions shall be met:
    - (1) Maximum height, twenty feet above the existing building or structure.
    - (2) If the applicant proposes to locate the telecommunications equipment in a separate shelter, the shelter shall comply with the following:
      - A. The shelter shall comply with the minimum setback requirements for the subject zoning district.
      - B. The maximum size of the equipment shelter shall not exceed 300 square feet, or, if there is more than one, 750 total square feet.
      - C. A buffer yard shall be planted in accordance with Section 1193.02(D).
      - D. Vehicular access to the shelter shall not interfere with the parking or vehicular circulation on the site for the principal use.
  - (c) Location on a Nonresidential-Use Property. A tower to support an antenna may be constructed on a property with a nonresidential use that is a conditionally permitted use within the district, including but not limited to a church, hospital, school, municipal or government building, facility or structure, agricultural use and a utility use, subject to the following conditions:
    - (1) The tower shall be set back from any property line abutting a single-family or two-family residential lot by a distance equal to the vertical height of the wireless telecommunications tower plus 50 feet.
    - (2) Maximum height:
      - A. Tower. 200 feet (includes antenna)
      - B. Equipment Shelter. Must comply with maximum building height for district.
    - (3) The maximum size of the equipment shelter shall not exceed 300 square feet, or, if there is more than one, 750 total square feet.
    - (4) Vehicular access to the tower and equipment shelter shall, whenever feasible, be provided along the circulation driveways of the existing use.
- (Ord. 89-1997. Passed 12-11-97.)

#### 1193.05 CRITERIA FOR A CONDITIONAL USE.

A wireless telecommunications facility which includes a tower may be permitted as a conditional use in a commercial district, or located on an institutionally-used property in any residential district. In order to be considered for review, the applicant must prove that a newly constructed tower is necessary in that opportunities for co-location on an existing tower is not feasible. The following steps must also be taken for the application to be considered for review in this category:

- (a) The applicant shall present a landscaping plan that indicates how the wireless telecommunications facility will be screened from adjoining uses.
- (b) The applicant shall demonstrate that the telecommunications tower must be located where it is proposed in order to service the applicant's service area. There shall be an explanation of why a tower and this proposed site is technically necessary.
- (c) Where the telecommunications facility is located on a property with another principal use, the applicant shall present documentation that the owner of the property has granted an easement or entered into a lease for the proposed facility and that the vehicular access is provided to the facility.
- (d) Any applicant requesting permission to install a new tower shall provide evidence of written contact with all wireless service providers who supply service within a quarter mile radius of the proposed facility. The applicant shall inquire about

potential co-location opportunities at all technically feasible locations. The contacted providers shall be requested to respond in writing to the inquiry within 30 days. The applicant's letter(s) as well as response(s) shall be presented to the Planning and Zoning Commission as a means of demonstrating the need for a new tower.

(Ord. 89-1997. Passed 12-11-97.)

## CHAPTER 1194

### Flood Damage Reduction

#### 1194.01 General provisions.

#### 1194.02 Definitions.

#### 1194.03 Administration.

#### 1194.04 Use and development standards for flood hazard reduction.

#### 1194.05 Appeals and variances.

#### 1194.06 Enforcement.

##### 1194.01 GENERAL PROVISIONS.

(a) Statutory Authorization. Article XVIII, Section 3, of the Ohio Constitution grants municipalities the legal authority to adopt land use and control measures for promoting the health, safety, and general welfare of its citizens. Therefore, the Council of the City of Tallmadge, State of Ohio, does ordain as follows:

(b) Findings of Fact. The City of Tallmadge has special flood hazard areas that are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. Additionally, structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage also contribute to the flood loss. In order to minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.

(c) Statement of Purpose. It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- (6) Help maintain a stable tax base by providing for the proper use and development of areas of special flood hazard so as to protect property and minimize future flood blight areas;
- (7) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;
- (8) Minimize the impact of development on adjacent properties within and near floodprone areas;
- (9) Ensure that the flood storage and conveyance functions of the floodplain are maintained;
- (10) Minimize the impact of development on the natural, beneficial values of the floodplain;
- (11) Prevent floodplain uses that are either hazardous or environmentally incompatible; and
- (12) Meet community participation requirements of the National Flood Insurance Program.

(d) Methods of Reducing Flood Loss. In order to accomplish its purposes, these regulations include methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water hazards, or which result in damaging increases in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- (4) Controlling filling, grading, dredging, excavating, and other development which may increase flood damage; and,
- (5) Preventing or regulating the construction of flood barriers, which will unnaturally divert flood waters or which may increase flood hazards in other areas.

(e) Lands to Which These Regulations Apply. These regulations shall apply to all areas of special flood hazard within the jurisdiction of the City of Tallmadge, including any additional areas of special flood hazard annexed by the City of Tallmadge.

(f) Basis for Establishing the Areas of Special Flood Hazard. For the purposes of these regulations, the following studies and/or maps are adopted:

- (1) Flood Insurance Study (FIS) Summit County, Ohio and incorporated areas and flood insurance Rate Map (FIRM) Summit County, Ohio and incorporated Areas both effective July 20, 2009.
- (2) Other studies and/or maps, which may be relied upon for establishment of the flood protection elevation, delineation of the 100-year floodplain, floodways or delineation of other areas of special flood hazard.
- (3) Any hydrologic and hydraulic engineering analysis authored by a registered Professional Engineer in the State of Ohio which has been approved by the City of Tallmadge.
- (4) Any revisions to the aforementioned maps and/or studies are hereby adopted by reference and declared to be a part of these regulations. Such maps and/or studies are on file at the office of the Clerk of Council of the City of Tallmadge, 46 North Avenue, Tallmadge, Ohio 44278.

(g) Abrogation and Greater Restrictions. These regulations are not intended to repeal any existing ordinances including Subdivision Regulations, Zoning or Building Codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall be followed. These regulations shall not impair any deed restriction covenant or easement but the land subject to such interests shall also be governed by these regulations.

(h) Interpretation. In the interpretation and application of these regulations, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and,

(3) Deemed neither to limit nor repeal any other powers granted under state statutes. Where a provision of these regulations may be in conflict with a state or Federal law, such state or Federal law shall take precedence over these regulations.

(i) Warning and Disclaimer of Liability. The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man made or natural causes. These regulations do not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the City of Tallmadge, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.

(j) Severability. Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

(Ord. 71-2009. Passed 5-14-09.)

#### **1194.02 DEFINITIONS.**

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them the meaning they have in common usage and to give these regulations the most reasonable application. For purposes of this chapter, the following definitions shall apply:

- (a) Accessory Structure. A structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.
- (b) Appeal. A request for review of the Floodplain Administrator's interpretation of any provision of these regulations or a request for a variance.
- (c) Base Flood. The flood having a one percent chance of being equaled or exceeded in any given year. The base flood may also be referred to as the one percent (1%) chance annual flood or one hundred (100) year flood.
- (d) Base (100-Year) Flood Elevation (BFE). The water surface elevation of the base flood in relation to a specified datum, usually the National Geodetic Vertical Datum of 1929 or the North American Vertical Datum of 1988, and usually expressed in Feet Mean Sea Level (MSL). In Zone AO areas, the base flood elevation is the natural grade elevation plus the depth number (from 1 to 3 feet).
- (e) Basement. Any area of the building having its floor subgrade (below ground level) on all sides.
- (f) Development. Any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
- (g) Enclosure Below the Lowest Floor. See "Lowest Floor."
- (h) Executive Order 11988 (Floodplain Management). Issued by President Carter in 1977, this order requires that no federally assisted activities be conducted in or have the potential to affect identified special flood hazard areas, unless there is no practicable alternative.
- (i) Federal Emergency Management Agency (FEMA). The agency with the overall responsibility for administering the National Flood Insurance Program.
- (j) Fill. A deposit of earth material placed by artificial means.
- (k) Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - (1) The overflow of inland or tidal waters, and/or
  - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
- (l) Flood Hazard Boundary Map (FHBM). Usually the initial map, produced by the Federal Emergency Management Agency, or U.S. Department of Housing and Urban Development, for a community depicting approximate special flood hazard areas.
- (m) Flood Insurance Rate Map (FIRM). An official map on which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has delineated the areas of special flood hazard.
- (n) Flood Insurance Risk Zones. Zone designations on FHBMs and FIRMs that indicate the magnitude of the flood hazard in specific areas of a community. Following are the zone definitions:
  - Zone A: Special flood hazard areas inundated by the 100-year flood; base flood elevations are not determined.
  - Zones A1-30 and Zone AE: Special flood hazard areas inundated by the 100-year flood; base flood elevations are determined.
  - Zone AO: Special flood hazard areas inundated by the 100-year flood; with flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths are determined.
  - Zone AH: Special flood hazard areas inundated by the 100-year flood; flood depths of 1 to 3 feet (usually areas of ponding); base flood elevations are determined.
  - Zone A99: Special flood hazard areas inundated by the 100-year flood to be protected from the 100-year flood by a Federal flood protection system under construction; no base flood elevations are determined.
  - Zone B and Zone X (shaded): Areas of 500-year flood; areas subject to the 100-year flood with average depths of less than 1 foot or with contributing drainage area less than 1 square mile; and areas protected by levees from the base flood.
  - Zone C and Zone X (unshaded): Areas determined to be outside the 500-year floodplain.
- (o) Flood Insurance Study (FIS). The official report in which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has provided flood profiles, floodway boundaries (sometimes shown on Flood Boundary and Floodway Maps), and the water surface elevations of the base flood.
- (p) Flood Protection Elevation. The Flood Protection Elevation, or FPE, is the base flood elevation plus zero (0) feet of freeboard. In areas where no base flood elevations exist from any authoritative source, the flood protection elevation can be historical flood elevations, or base flood elevations determined and/or approved by the Floodplain Administrator.
- (q) Floodway. A floodway is the channel of a river or other watercourse and the adjacent land areas that have been reserved in order to pass the base flood discharge. A floodway is typically determined through a hydraulic and hydrologic engineering analysis such that the cumulative increase in the water surface elevation of the base flood discharge is no more than a designated height. In no case shall the designated height be more than one foot at any point within the community.

The floodway is an extremely hazardous area, and is usually characterized by any of the following: Moderate to high velocity flood waters, high potential for debris and projectile impacts, and moderate to high erosion forces.

- (r) Freeboard. A factor of safety usually expressed in feet above a flood level for the purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, obstructed bridge openings, debris and ice jams, and the hydrologic effect of urbanization in a watershed.
- (s) Historic structure. Any structure that is:
  - (1) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listings on the National Register;
  - (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or
  - (3) Individually listed on the State of Ohio's inventory of historic places maintained by the Ohio Historic Preservation Office.
  - (4) Individually listed on the inventory of historic places maintained by City of Tallmadge's historic preservation program, at such time the program is certified by the Ohio Historic Preservation Office.
- (t) Hydrologic and hydraulic engineering analysis. An analysis performed by a professional engineer, registered in the State of Ohio, in accordance with standard engineering practices as accepted by FEMA, used to determine flood elevations and/or floodway boundaries.
- (u) Letter of Map Change (LOMC). A Letter of Map Change is an official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, and Flood Insurance Studies. LOMCs are broken down into the following categories:
  - (1) Letter of Map Amendment (LOMA). A revision based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a special flood hazard area.
  - (2) Letter of Map Revision (LOMR). A revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a LOMR-F, is a determination concerning whether a structure or parcel has been elevated by fill above the base flood elevation and is, therefore, excluded from the special flood hazard area.
  - (3) Conditional Letter of Map Revision (CLOMR). A formal review and comment by FEMA as to whether a proposed project complies with the minimum National Flood Insurance Program floodplain management criteria. A CLOMR does not amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.
- (v) Lowest Floor. The lowest floor of the lowest enclosed area (including basement) of a structure. This definition excludes an "enclosure below the lowest floor" which is an unfinished or flood resistant enclosure usable solely for parking of vehicles, building access or storage, in an area other than a basement area, provided that such enclosure is built in accordance with the applicable design requirements specified in these regulations for enclosures below the lowest floor.
- (w) Manufactured Home. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle". For the purposes of these regulations, a manufactured home includes manufactured homes and mobile homes as defined in Chapter 3733 of the Ohio Revised Code.
- (x) Manufactured Home Park. As specified in the Ohio Administrative Code 3701-27-01, a manufactured home park means any tract of land upon which three or more manufactured homes used for habitation are parked, either free of charge or for revenue purposes, and includes any roadway, building, structure, vehicle, or enclosure used or intended for use as part of the facilities of the park. A tract of land that is subdivided and the individual lots are not for rent or rented, but are for sale or sold for the purpose of installation of manufactured homes on the lots, is not a manufactured home park, even though three or more manufactured homes are parked thereon, if the roadways are dedicated to the local government authority.
- (y) National Flood Insurance Program (NFIP). The NFIP is a Federal program enabling property owners in participating communities to purchase insurance protection against losses from flooding. This insurance is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods. Participation in the NFIP is based on an agreement between local communities and the Federal Government that states if a community will adopt and enforce floodplain management regulations to reduce future flood risks to all development in special flood hazard areas, the Federal Government will make flood insurance available within the community as a financial protection against flood loss.
- (z) New Construction. Structures for which the "start of construction" commenced on or after the initial effective date of the City of Tallmadge Flood Insurance Rate Map, April 15, 1981, and includes any subsequent improvements to such structures.
- (aa) Person. Includes any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies. An agency is further defined as any governmental entity of the State and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. "Agency" does not include the General Assembly, the Controlling Board, the Adjutant General's Department, or any court.
- (bb) Recreational vehicle. A vehicle which is:
  - (1) Built on a single chassis,
  - (2) 400 square feet or less when measured at the largest horizontal projection,
  - (3) Designed to be self-propelled or permanently towable by a light duty truck, and
  - (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (cc) Registered Professional Architect. A person registered to engage in the practice of architecture under the laws of the State of Ohio.



- (dd) Registered Professional Engineer. A person registered as a professional engineer under the laws of the State of Ohio.
- (ee) Registered Professional Surveyor. A person registered as a professional surveyor under the laws of the State of Ohio.
- (ff) Special Flood Hazard Area. Also known as "Areas of Special Flood Hazard", it is the land in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency on Flood Insurance Rate Maps, Flood Insurance Studies, Flood Boundary and Floodway Maps and Flood Hazard Boundary Maps as Zones A, AE, AH, AO, A1 30, and A99. Special flood hazard areas may also refer to areas that are floodprone and designated from other federal, state or local sources of data including but not limited to historical flood information reflecting high water marks, previous flood inundation areas, and floodprone soils associated with a watercourse.
- (gg) Start of Construction. The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of a building.
- (hh) Structure. A walled and roofed building, manufactured home, or gas or liquid storage tank that is principally above ground.
- (ii) Substantial Damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.
- (jj) Substantial Improvement. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures, which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include:
  - (1) Any improvement to a structure that is considered "new construction,"
  - (2) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified prior to the application for a development permit by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
  - (3) Any alteration of a "historic structure," provided that the alteration would not preclude the structure's continued designation as a "historic structure".
- (kk) Variance. A grant of relief from the standards of these regulations consistent with the variance conditions herein.
- (ll) Violation. The failure of a structure or other development to be fully compliant with these regulations. (Ord. 71-2009. Passed 5-14-09.)

### **1194.03 ADMINISTRATION.**

- (a) Designation of the Floodplain Administrator. The City Engineer is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator.
- (b) Duties and Responsibilities of the Floodplain Administrator. The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:
  - (1) Evaluate applications for permits to develop in special flood hazard areas.
  - (2) Interpret floodplain boundaries and provide flood hazard and flood protection elevation information.
  - (3) Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met, or refuse to issue the same in the event of noncompliance.
  - (4) Inspect buildings and lands to determine whether any violations of these regulations have been committed.
  - (5) Make and permanently keep all records for public inspection necessary for the administration of these regulations including Flood Insurance Rate Maps, Letters of Map Amendment and Revision, records of issuance and denial of permits to develop in special flood hazard areas, determinations of whether development is in or out of special flood hazard areas for the purpose of issuing floodplain development permits, elevation certificates, variances, and records of enforcement actions taken for violations of these regulations.
  - (6) Enforce the provisions of these regulations.
  - (7) Provide information, testimony, or other evidence as needed during variance hearings.
  - (8) Coordinate map maintenance activities and FEMA follow-up.
  - (9) Conduct substantial damage determinations to determine whether existing structures, damaged from any source and in special flood hazard areas identified by FEMA, must meet the development standards of these regulations.
- (c) Floodplain Development Permits. It shall be unlawful for any person to begin construction or other development activity including but not limited to filling; grading; construction; alteration, remodeling, or expanding any structure; or alteration of any watercourse wholly within, partially within or in contact with any identified special flood hazard area, as established in this chapter, until a floodplain development permit is obtained from the Floodplain Administrator. Such floodplain development permit shall show that the proposed development activity is in conformity with the provisions of these regulations. No such permit shall be issued by the Floodplain Administrator until the requirements of these regulations have been met.
- (d) Application Required. An application for a floodplain development permit shall be required for all development activities located wholly within, partially within, or in contact with an identified special flood hazard area. Such application shall be made by the owner of the property or his/her authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished for that purpose. Where it is unclear whether a development site is in a special flood hazard area, the Floodplain Administrator may require an application for a floodplain development permit to determine the development's location. Such applications shall include, but not be limited to:

- (1) Site plans drawn to scale showing the nature, location, dimensions, and topography of the area in question; the location of existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.
  - (2) Elevation of the existing, natural ground where structures are proposed.
  - (3) Elevation of the lowest floor, including basement, of all proposed structures.
  - (4) Such other material and information as may be requested by the Floodplain Administrator to determine conformance with, and provide enforcement of these regulations.
  - (5) Technical analyses conducted by the appropriate design professional registered in the State of Ohio and submitted with an application for a floodplain development permit when applicable:
    - A. Floodproofing certification for non-residential floodproofed structure.
    - B. Certification that fully enclosed areas below the lowest floor of a structure not meeting the design requirements of this chapter are designed to automatically equalize hydrostatic flood forces.
    - C. Description of any watercourse alteration or relocation that the flood carrying capacity of the watercourse will not be diminished, and maintenance assurances.
    - D. A hydrologic and hydraulic analysis demonstrating that the cumulative effect of proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood by more than one foot in special flood hazard areas where the Federal Emergency Management Agency has provided base flood elevations but no floodway.
    - E. A hydrologic and hydraulic engineering analysis showing impact of any development on flood heights in an identified floodway.
    - F. Generation of base flood elevation(s) for subdivision and large-scale developments.
  - (6) A floodplain development permit application fee set by the schedule of fees adopted by the City Council of the City of Tallmadge.
- (e) Review and Approval of a Floodplain Development Permit Application.
- (1) Review.
    - A. After receipt of a complete application, the Floodplain Administrator shall review the application to ensure that the standards of these regulations have been met. No floodplain development permit application shall be reviewed until all required information under this Chapter has been received by the Floodplain Administrator.
    - B. The Floodplain Administrator shall review all floodplain development permit applications to assure that all necessary permits have been received from those federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits as required including permits issued by the U.S. Army Corps of Engineers under the Rivers and Harbors Act and the Clean Water Act, and the Ohio Environmental Protection Agency under the Clean Water Act.
  - (2) Approval. Within thirty (30) days after the receipt of a complete application, the Floodplain Administrator shall either approve or disapprove the application. If an application is approved, a floodplain development permit shall be issued. All floodplain development permits shall be conditional upon the commencement of work within one (1) year. A floodplain development permit shall expire one (1) year after issuance unless the permitted activity has been substantially begun and is thereafter pursued to completion.
- (f) Inspections. The Floodplain Administrator shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions.
- (g) Post-Construction Certifications Required. The following as-built certifications are required after a floodplain development permit has been issued:
- (1) For new or substantially improved residential structures, or nonresidential structures that have been elevated, the applicant shall have a Federal Emergency Management Agency Elevation Certificate completed by a registered surveyor to record as-built elevation data. For elevated structures in Zone A and Zone AO areas without a base flood elevation, the elevation certificate may be completed by the property owner or owner's representative.
  - (2) For all development activities subject to this chapter, a Letter of Map Revision.
- (h) Revoking a Floodplain Development Permit. A floodplain development permit shall be revocable, if among other things, the actual development activity does not conform to the terms of the application and permit granted thereon. In the event of the revocation of a permit, an appeal may be taken to the Appeals Board.
- (i) Exemption from Filing a Development Permit. An application for a floodplain development permit shall not be required for:
- (1) Maintenance work such as roofing, painting, and basement sealing, or for small nonstructural development activities (except for filling and grading) valued at less than five thousand dollars (\$5,000).
  - (2) Development activities in an existing or proposed manufactured home park that are under the authority of the Ohio Department of Health and subject to the flood damage reduction provisions of the Ohio Administrative Code.
  - (3) Major utility facilities permitted by the Ohio Power Siting Board under the Ohio Revised Code.
  - (4) Hazardous waste disposal facilities permitted by the Hazardous Waste Siting Board under the Ohio Revised Code.
  - (5) Development activities undertaken by a federal agency and which are subject to Federal Executive Order 11988 - Floodplain Management.
  - (6) Any proposed action exempt from filing for a floodplain development permit is also exempt from the standards of these regulations.
- (j) Map Maintenance Activities. To meet National Flood Insurance Program minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that the City of Tallmadge flood maps, studies and other data accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:
- (1) Requirement to submit new technical data.
    - A. For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These development proposals include:
      1. Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries;

2. Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area;
  3. Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and
  4. Subdivision or large scale development proposals requiring the establishment of base flood elevations in accordance with this chapter.
- B. It is the responsibility of the applicant to have all technical data prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision, and submitted to FEMA. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
- C. The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for:
1. Proposed floodway encroachments that increase the base flood elevation; and
  2. Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.
- D. Floodplain development permits issued by the Floodplain Administrator shall be conditioned upon the applicant obtaining a Letter of Map Revision from FEMA for any development proposal subject to this chapter.
- (2) Right to submit new technical data. The Floodplain Administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the Director of Public Service and the Mayor of the City of Tallmadge, and may be submitted at any time.
- (3) Annexation/Detachment. Upon occurrence, the Floodplain Administrator shall notify FEMA in writing whenever the boundaries of the City of Tallmadge have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that the City of Tallmadge's Flood Insurance Rate Map accurately represents the City of Tallmadge boundaries, include within such notification a copy of a map of the City of Tallmadge suitable for reproduction, clearly showing the new corporate limits or the new area for which the City of Tallmadge has assumed or relinquished floodplain management regulatory authority.
- (k) Data Use and Flood Map Interpretation. The following guidelines shall apply to the use and interpretation of maps and other data showing areas of special flood hazard:
- (1) In areas where FEMA has not identified special flood hazard areas, or in FEMA identified special flood hazard areas where base flood elevation and floodway data have not been identified, the Floodplain Administrator shall review and reasonably utilize any other flood hazard data available from a federal, state, or other source.
  - (2) Base flood elevations and floodway boundaries produced on FEMA flood maps and studies shall take precedence over base flood elevations and floodway boundaries by any other source that reflect a reduced floodway width and/or lower base flood elevations. Other sources of data, showing increased base flood elevations and/or larger floodway areas than are shown on FEMA flood maps and studies, shall be reasonably used by the Floodplain Administrator.
  - (3) When Preliminary Flood Insurance Rate Maps and/or Flood Insurance Study have been provided by FEMA:
    - A. Upon the issuance of a Letter of Final Determination by the FEMA, the preliminary flood hazard data shall be used and replace all previously existing flood hazard data provided from FEMA for the purposes of administering these regulations.
    - B. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall only be required where no base flood elevations and/or floodway areas exist or where the preliminary base flood elevations or floodway area exceed the base flood elevations and/or floodway widths in existing flood hazard data provided from FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.
  - (4) The Floodplain Administrator shall make interpretations, where needed, as to the exact location of the flood boundaries and areas of special flood hazard. A person contesting the determination of the location of the boundary shall be given a reasonable opportunity to appeal the interpretation.
  - (5) Where a map boundary showing an area of special flood hazard and field elevations disagree, the base flood elevations or flood protection elevations (as found on an elevation profile, floodway data table, established high water marks, etc.) shall prevail.
- (l) Substantial Damage Determinations. Damages to structures may result from a variety of causes including flood, tornado, wind, heavy snow, fire, etc. After such a damage event, the Floodplain Administrator shall:
- (1) Determine whether damaged structures are located in special flood hazard areas;
  - (2) Conduct substantial damage determinations for damaged structures located in special flood hazard areas; and
  - (3) Make a reasonable attempt to notify owners of substantially damaged structures of the need to obtain a floodplain development permit prior to repair, rehabilitation, or reconstruction.

Additionally, the Floodplain Administrator may implement other measures to assist with the substantial damage determination and subsequent repair process. These measures include issuing press releases, public service announcements, and other public information materials related to the floodplain development permits and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures materials and other information related to the proper repair of damaged structures in special flood hazard areas; and assist owners of substantially damaged structures with Increased Cost of Compliance insurance claims.

(Ord. 71-2009. Passed 5-14-09.)

#### **1194.04 USE AND DEVELOPMENT STANDARDS FOR FLOOD HAZARD REDUCTION.**

The following use and development standards apply to development wholly within, partially within, or in contact with any special flood hazard area:

- (a) Use Regulations.

- (1) Permitted Uses. All uses not otherwise prohibited in this section or any other applicable land use regulation adopted by the City of Tallmadge are allowed provided they meet the provisions of these regulations.
- (2) Prohibited Uses.
  - A. Private water supply systems in all special flood hazard areas identified by FEMA.
  - B. Infectious waste treatment facilities in all special flood hazard areas.
- (b) Water and Wastewater Systems. The following standards apply to all water supply, sanitary sewerage and waste disposal systems not otherwise regulated by the Ohio Revised Code:
  - (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems;
  - (2) New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
  - (3) On-site waste disposal systems shall be located to avoid impairment to or contamination from them during flooding.
- (c) Subdivisions and Large Developments.
  - (1) All subdivision proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations;
  - (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
  - (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
  - (4) In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and other proposed developments containing at least 50 lots or 5 acres, whichever is less.
  - (5) The applicant shall submit the technical data required under this chapter to FEMA when a hydrologic and hydraulic analysis is completed that generates base flood elevations.
- (d) Residential Structures.
  - (1) New construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Where a structure, including its foundation members, is elevated on fill to or above the base flood elevation, the requirements for anchoring and construction materials resistant to flood damage are satisfied.
  - (2) New construction and substantial improvements shall be constructed with methods and materials resistant to flood damage.
  - (3) New construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.
  - (4) New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to or above the flood protection elevation. In Zone AO areas with no elevations specified, the structure shall have the lowest floor, including basement, elevated at least two feet above the highest adjacent natural grade.
  - (5) New construction and substantial improvements, including manufactured homes, that do not have basements and that are elevated to the flood protection elevation using pilings, columns, posts, or solid foundation perimeter walls with openings sufficient to allow unimpeded movement of flood waters may have an enclosure below the lowest floor provided the enclosure meets the following standards:
    - A. Be used only for the parking of vehicles, building access, or storage; and
    - B. Be designed and certified by a registered professional engineer or architect to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters; or
    - C. Have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
  - (6) Manufactured homes shall be affixed to a permanent foundation and anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
  - (7) Repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure, shall be exempt from the development standards of this section.
  - (8) In AO Zones, new construction and substantial improvement shall have adequate drainage paths around structures on slopes to guide floodwaters around and away from the structure.
- (e) Nonresidential Structures.
  - (1) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet the requirements of the preceding subsection (d) excluding paragraph (4).
  - (2) New construction and substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated to or above the level of the flood protection elevation; or, together with attendant utility and sanitary facilities, shall meet all of the following standards:
    - A. Be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water to the level of the flood protection elevation;
    - B. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
    - C. Be certified by a registered professional engineer or architect, through the use of a Federal Emergency Management Agency Floodproofing Certificate, that the design and methods of construction are in accordance with the applicable requirements of this chapter.
  - (3) In Zone AO areas with no elevations specified, the structure shall have the lowest floor, including basement, elevated at least

two feet above the highest adjacent natural grade.

- (f) Accessory Structures. Relief to the elevation or dry floodproofing standards may be granted for accessory structures containing no more than 600 square feet. Such structures must meet the following standards:
- (1) They shall not be used for human habitation;
  - (2) They shall be constructed of flood resistant materials;
  - (3) They shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters;
  - (4) They shall be firmly anchored to prevent flotation;
  - (5) Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the level of the flood protection elevation; and
  - (6) They shall meet the opening requirements of Section 1194.04(d)(5)C.
- (g) Recreational Vehicles. Recreational vehicles must meet at least one of the following standards:
- (1) They shall not be located on sites in special flood hazard areas for more than 180 days, or
  - (2) They must be fully licensed and ready for highway use, or
  - (3) They must meet all standards of Section 1194.04(d).
- (h) Above Ground Gas or Liquid Storage Tanks. All above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement resulting from hydrodynamic and hydrostatic loads.
- (i) Assurance of Flood Carrying Capacity. Pursuant to the purpose and methods of reducing flood damage stated in these regulations, the following additional standards are adopted to assure that the reduction of the flood carrying capacity of watercourses is minimized:
- (1) Development in Floodways.
    - A. In floodway areas, development shall cause no increase in flood levels during the occurrence of the base flood discharge. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that the proposed development would not result in any increase in the base flood elevation; or
    - B. Development in floodway areas causing increases in the base flood elevation may be permitted provided all of the following are completed by the applicant:
      1. Meet the requirements to submit technical data required by this chapter;
      2. An evaluation of alternatives, which would not result in increased base flood elevations and an explanation why these alternatives are not feasible;
      3. Certification that no structures are located in areas that would be impacted by the increased base flood elevation;
      4. Documentation of individual legal notices to all impacted property owners within and outside the community, explaining the impact of the proposed action on their property; and
      5. Concurrence of the Director of Public Service and the Mayor of the City of Tallmadge and the Chief Executive or other appropriate officer of any other communities impacted by the proposed actions.
  - (2) Development in Riverine Areas with Base Flood Elevations but No Floodways.
    - A. In riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the base flood elevation more than 1.0 (one) foot at any point. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that this standard has been met; or,
    - B. Development in riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated causing more than one foot increase in the base flood elevation may be permitted provided all of the following are completed by the applicant:
      1. An evaluation of alternatives which would result in an increase of one foot or less of the base flood elevation and an explanation why these alternatives are not feasible;
      2. Compliance with Section 1194.04(i)(1)B, items 1. and 3.-5.
- (3) Alterations of a Watercourse. For the purpose of these regulations, a watercourse is altered when any change occurs within its banks. The extent of the banks shall be established by a field determination of the "bankfull stage." The field determination of "bankfull stage" shall be based on methods presented in Chapter 7 of the USDA Forest Service General Technical Report RM-245, Stream Channel Reference Sites: An Illustrated Guide to Field Technique or other applicable publication available from a Federal, State, or other authoritative source. For all proposed developments that alter a watercourse, the following standards apply:
- A. The bankfull flood carrying capacity of the altered or relocated portion of the watercourse shall not be diminished. Prior to the issuance of a floodplain development permit, the applicant must submit a description of the extent to which any watercourse will be altered or relocated as a result of the proposed development, and certification by a registered professional engineer that the bankfull flood carrying capacity of the watercourse will not be diminished.
  - B. Adjacent communities, the U.S. Army Corps of Engineers, and the Ohio Department of Natural Resources, Division of Water, must be notified prior to any alteration or relocation of a watercourse. Evidence of such notification must be submitted to the Federal Emergency Management Agency.
  - C. The applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of said watercourse so that the flood carrying capacity will not be diminished. The Floodplain Administrator may require the permit holder to enter into an agreement with the City of Tallmadge specifying the maintenance responsibilities. If an agreement is required, it shall be made a condition of the floodplain development permit.
  - D. The applicant shall meet the requirements to submit technical data required by this chapter when an alteration of a watercourse results in the relocation or elimination of the special flood hazard area, including the placement of culverts.

(Ord. 71-2009. Passed 5-14-09.)

#### **1194.05 APPEALS AND VARIANCES.**

(a) Appeals Board Established.

- (1) Pursuant to Article XII of the Tallmadge Charter, the Board of Zoning Appeals shall hear all appeals and variances from this Chapter.
- (2) All meetings of the Appeals Board shall be open to the public except that the Board may deliberate in executive sessions as part of quasi-judicial hearings in accordance with law. The Appeals Board shall keep minutes of its proceedings showing the vote of each member upon each question and shall keep records of all official actions. Records of the Appeals Board shall be kept and filed in the Office of the Building and Zoning Department of the City of Tallmadge.

(b) Powers and Duties.

- (1) The Appeals Board shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Floodplain Administrator in the administration or enforcement of these regulations.
- (2) Authorize variances in accordance with this Chapter.

(c) Appeals. Any person affected by any notice and order, or other official action of the Floodplain Administrator may request and shall be granted a hearing on the matter before the Appeals Board provided that such person shall file, within thirty (30) days of the date of such notice and order, or other official action, a brief statement of the grounds for such hearing or for the mitigation of any item appearing on any order of the Floodplain Administrator's decision. Such appeal shall be in writing on form(s) provided by the City together with payment of the required fee pursuant to Chapter 1137, signed by the applicant, and be filed with the Floodplain Administrator. Upon receipt of the appeal, the Floodplain Administrator shall transmit said notice and all pertinent information on which the Floodplain Administrator's decision was made to the Appeals Board.

Upon receipt of the notice of appeal, the Appeals Board shall fix a reasonable time for the appeal, give notice in writing to parties in interest, and decide the appeal within a reasonable time after it is submitted.

(d) Variances. Any person believing that the use and development standards of these regulations would result in unnecessary hardship may file an application for a variance. The Appeals Board shall have the power to authorize, in specific cases, such variances from the standards of these regulations, not inconsistent with Federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship.

(1) Application for a Variance.

- A. Any owner, or agent thereof, of property for which a variance is sought shall make an application for a variance by filing it with the Floodplain Administrator, who upon receipt of the variance shall transmit it to the Appeals Board.
- B. Such application shall be on a form provided by the City and at a minimum shall contain the following information: Name, address, and telephone number of the applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain; description of the variance sought; and reason for the variance request.
- C. All applications for a variance shall be accompanied by a variance application fee set in the schedule of fees adopted by the City Council of the City of Tallmadge.

(2) Public Hearing. At such hearing the applicant shall present such statements and evidence as the Appeals Board requires. In considering such variance applications, the Appeals Board shall consider and make findings of fact on all evaluations, all relevant factors, standards specified in other sections of these regulations and the following factors:

- A. The danger that materials may be swept onto other lands to the injury of others.
- B. The danger to life and property due to flooding or erosion damage.
- C. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- D. The importance of the services provided by the proposed facility to the community.
- E. The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage.
- F. The necessity to the facility of a waterfront location, where applicable.
- G. The compatibility of the proposed use with existing and anticipated development.
- H. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
- I. The safety of access to the property in times of flood for ordinary and emergency vehicles.
- J. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
- K. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(3) Variances shall be granted upon a finding of:

- A. Good and sufficient cause;
- B. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant;
- C. A determination that the granting of a variance will not result in increased flood heights beyond that which is allowed in these regulations; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws;
- D. A determination that the structure or other development is protected by methods to minimize flood damages; and
- E. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Upon consideration of the above factors and the purposes of these regulations, the Appeals Board may attach such conditions to the granting of variances, as it deems necessary to further the purposes of these regulations.

(4) Other Conditions for Variances.

- A. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
  - B. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in Section 1194.05(d)(2) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
  - C. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (e) Procedure at Hearings.
- (1) All testimony shall be given under oath.
  - (2) A complete record of the proceedings shall be kept, except confidential deliberations of the Board, but including all documents presented and a verbatim record of the testimony of all witnesses.
  - (3) The applicant shall proceed first to present evidence and testimony in support of the appeal or variance.
  - (4) The Administrator may present evidence or testimony in opposition to the appeal or variance.
  - (5) All witnesses shall be subject to cross-examination by the adverse party or their counsel.
  - (6) Evidence that is not admitted may be proffered and shall become part of the record for appeal.
  - (7) The Board shall issue subpoenas upon written request for the attendance of witnesses. A reasonable deposit to cover the cost of issuance and service shall be collected in advance.
  - (8) The Board shall prepare conclusions of fact supporting its decision. The decision may be announced at the conclusion of the hearing and thereafter issued in writing or the decision may be issued in writing within a reasonable time after the hearing.
- (f) Appeal to the Court. Those aggrieved by the decision of the Appeals Board may appeal such decision to the Summit County or Portage County Court of Common Pleas as appropriate, as provided in Chapter 2506 of the Ohio Revised Code. (Ord. 71-2009. Passed 5-14-09.)

#### **1194.06 ENFORCEMENT.**

- (a) Compliance Required.
- (1) No structure or land shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged or altered without full compliance with the terms of these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations, unless expressly exempted under this chapter from filing for a development permit.
  - (2) Failure to obtain a floodplain development permit shall be a violation of these regulations.
  - (3) Floodplain development permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the use, and arrangement, set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction contrary to that authorized shall be deemed a violation of these regulations.
- (b) Notice of Violation. Whenever the Floodplain Administrator determines that there has been a violation of any provision of these regulations, he shall give notice of such violation to the person responsible therefor, including but not limited to the property owner, operator, agent, applicant, or other person, and order compliance with these regulations as hereinafter provided. Such notice and order shall:
- (1) Be put in writing on an appropriate form;
  - (2) Include a list of violations, referring to the section or sections of these regulations that have been violated, and order remedial action, which, if taken, will effect compliance with the provisions of these regulations;
  - (3) Specify a reasonable time for performance;
  - (4) Advise the person of the right to appeal;
  - (5) Service shall be made in person or by certified mail to the person's last known mailing address, residence, or place of business, and/or a copy is posted in a conspicuous place in or on the property affected.
- (c) Violations and Penalties. Violation of the provisions of these regulations or failure to comply with any of its requirements shall be deemed to be a strict liability offense, and shall constitute a fourth degree misdemeanor. Any person who violates these regulations or fails to comply with any of its requirements shall upon conviction thereof be fined and/or incarcerated as provided by the laws of the City of Tallmadge. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Tallmadge from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. 71-2009. Passed 5-14-09.)

### **CHAPTER 1195**

#### **Erosion and Sediment Control**

- 1195.01 Purpose and scope.**
- 1195.02 Definitions.**
- 1195.03 Disclaimer of liability.**
- 1195.04 Conflicts, severability, nuisances, and responsibility.**
- 1195.05 Regulated activities.**
- 1195.06 Application procedures.**
- 1195.07 Storm water pollution prevention plan.**
- 1195.08 Abbreviated storm water pollution prevention plan.**
- 1195.09 Compliance with local, state, and federal regulations.**
- 1195.08 Performance standards.**
- 1195.11 Fees.**
- 1195.12 Bond.**
- 1195.13 Enforcement.**

- 1195.14 Violations.
- 1195.15 Appeals.
- 1195.99 Penalty.

CROSS REFERENCES  
Riparian setbacks - see P. & Z. Ch. 1190

**1195.01 PURPOSE AND SCOPE.**

(a) The purpose of this regulation is to establish technically feasible and economically reasonable standards to achieve a level of erosion and sediment control that will minimize damage to property and degradation of water resources and wetlands, and will promote and maintain the health and safety of the citizens of Tallmadge.

(b) This regulation will:

(1) Allow development while minimizing increases in erosion and sedimentation.

(2) Reduce water quality impacts to receiving water resources and wetlands that may be caused by new development or redevelopment activities.

(c) This regulation applies to all parcels used or being developed, either wholly or partially, for new or relocated projects involving streets, highways, underground cables, or pipelines; subdivisions, planned residential developments, or larger common plans of development; industrial, commercial, institutional, or residential projects; building activities on farms; redevelopment activities; general clearing; and all other uses that are not specifically exempted in Section 1195.01(d).

(d) This regulation does not apply to activities regulated by, and in compliance with, the Ohio Agricultural Sediment Pollution Abatement Rules. Rules 1501:15-5-01 to 15-5-18 of the Ohio Administrative Code.

(Ord. 35-2006. Passed 8-10-06.)

**1195.02 DEFINITIONS.**

For purpose of this Chapter, the following terms shall have the meaning herein indicated:

- (a) ABBREVIATED STORM WATER POLLUTION PREVENTION PLAN (ABBREVIATED SWP3): The written document that sets forth the plans and practices to be used to meet the requirements of this Chapter if requested for project less than one acre in size.
- (b) ACRE: A measurement of area equaling 43,560 square feet.
- (c) BEST MANAGEMENT PRACTICES (BMPs): Schedule of activities, prohibitions of practices, maintenance procedures, and other management practices (both structural and non-structural) to minimize soil erosion and sedimentation and to prevent or reduce the pollution of water resources and wetlands. BMPs also include treatment requirements, operating procedures, and practices to control facility and/or construction site runoff, spillage, or leaks; sludge or waste disposal; or drainage from raw material storage.
- (d) COMMUNITY: Throughout this Chapter, this shall refer to the City of Tallmadge, its designated representatives, boards, or commissions.
- (e) CONSTRUCTION ENTRANCE: The permitted points of ingress and egress to development areas regulated under this Chapter.
- (f) DEVELOPMENT AREA: A parcel or contiguous parcels owned by one person or persons, or operated as one development unit, and used or being developed for commercial, industrial, residential, institutional, or other construction or alteration that changes runoff characteristics.
- (g) DISTURBED AREA: An area of land subject to erosion due to the removal of vegetative cover and/or soil disturbing activities.
- (h) DRAINAGE: (1) The area of land contributing surface water to a specific point. (2) The removal of excess surface water or groundwater from land by surface or subsurface drains.
- (i) EROSION: The process by which the land surface is worn away by the action of wind, water, ice, gravity, or any combination of those forces.
- (j) EROSION AND SEDIMENT CONTROL: The control of soil, both mineral and organic, to minimize the removal of soil from the land surface and to prevent its transport from a disturbed area by means of wind, water, ice, gravity, or any combination of those forces.
- (k) FINAL STABILIZATION: All soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of at least 70% coverage for the area has been established or equivalent stabilization measures, such as the use of mulches or geotextiles, have been employed.
- (l) LANDSCAPE ARCHITECT: A Professional Landscape Architect registered in the State of Ohio.
- (m) LARGER COMMON PLAN OF DEVELOPMENT OR SALE: A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.
- (n) MAXIMUM EXTENT PRACTICABLE: The level of pollutant reduction that site owners of small municipal separate storm sewer systems regulated under 40 C.F.R. Parts 9, 122, 123, and 124, referred to as NPDES Storm Water Phase II, must meet.
- (o) NPDES: National Pollutant Discharge Elimination System. A regulatory program in the Federal Clean Water Act that prohibits the discharge of pollutants into surface waters of the United States without a permit.
- (p) PARCEL: Means a tract of land occupied or intended to be occupied by a use, building or group of buildings and their accessory uses and buildings as a unit, together with such open spaces and driveways as are provided and required. A parcel may contain more than one contiguous lot individually identified by a 'Permanent Parcel Number' assigned by the County Auditor's Fiscal Officer's Office.
- (q) PERSON: Any individual, corporation, firm, trust, commission, board, public or private partnership, joint venture, agency, unincorporated association, municipal corporation, county or state agency, the federal government, other legal entity, or an agent thereof.
- (r) PHASING: Clearing a parcel of land in distinct sections, with the stabilization of each section before the clearing of the next.
- (s) PROFESSIONAL ENGINEER: A Professional Engineer registered in the State of Ohio.
- (t) RAINWATER AND LAND DEVELOPMENT MANUAL: Ohio's standards for storm water management, land development, and urban stream protection. The most current edition of these standards shall apply to this Chapter.
- (u) RUNOFF: The portion of rainfall, melted snow, or irrigation water that flows across the ground surface and is eventually



conveyed to water resources or wetlands.

- (v) **SEDIMENT:** The soils or other surface materials that are transported or deposited by the action of wind, water, ice, gravity, or any combination of those forces, as a product of erosion.
- (w) **SEDIMENTATION:** The deposition or settling of sediment.
- (x) **SETBACK:** A designated transition area around water resources or wetlands that is left in a natural, usually vegetated, state so as to protect the water resources or wetlands from runoff pollution. Soil disturbing activities in this area are restricted by this Chapter.
- (y) **SOIL DISTURBING ACTIVITY:** Clearing, grading, excavating, filling, or other alteration of the earth's surface where natural or human made ground cover is destroyed and that may result in, or contribute to, erosion and sediment pollution.
- (z) **SOIL & WATER CONSERVATION DISTRICT:** A subdivision of the State of Ohio organized under Chapter 1515 of the Ohio Revised Code referring to either the Soil and Water Conservation District Board or its designated employee(s). Hereafter referred to as SWCD.
- (aa) **STABILIZATION:** The use of BMPs, such as seeding and mulching, that reduce or prevent soil erosion by water, wind, ice, gravity, or a combination of those forces.
- (bb) **STREAM:** A surface water course with a well defined bed and bank, either natural or artificial, which confines and conducts continuous or periodic flowing water (ORC 6105.01).
- (cc) **STORM WATER POLLUTION PREVENTION PLAN (SWP3):** The written document that sets forth the plans and practices to be used to meet the requirements of this Chapter.
- (dd) **UNSTABLE SOILS:** A portion of land that is identified by the County or City Engineer, County or City Building Standards and/or the SWCD as prone to slipping, sloughing, or landslides, or is identified by the U.S. Department of Agriculture Natural Resource Conservation Service methodology as having a low soil strength.
- (ee) **WATER RESOURCE:** Any public or private body of water including lakes and ponds, as well as any brook, creek, river, or stream having banks, a defined bed, and a definite direction of flow, either continuously or intermittently flowing.
- (ff) **WETLAND:** Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas (40 CFR 232, as amended).

(Ord. 35-2006. Passed 8-10-06.)

#### **1195.03 DISCLAIMER OF LIABILITY.**

Compliance with the provisions of this Chapter shall not relieve any person from responsibility for damage to any person otherwise imposed by law. The provisions of this Chapter are promulgated to promote the health, safety, and welfare of the public and are not designed for the benefit of any individual or for the benefit of any particular parcel of property.

(Ord. 35-2006. Passed 8-10-06.)

#### **1195.04 CONFLICTS, SEVERABILITY, NUISANCES, AND RESPONSIBILITY.**

- (a) Where this Chapter is in conflict with other provisions of law or ordinance, the most restrictive provisions shall prevail.
- (b) If any clause, section, or provision of this Chapter is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.
- (c) This Chapter shall not be construed as authorizing any person to maintain a private or public nuisance on their property, and compliance with the provisions of this Chapter shall not be a defense in any action to abate such a nuisance.
- (d) Failure of the City to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the site owner from the responsibility for the condition or damage resulting therefrom, and shall not result in the City of Tallmadge, its officers, employees, or agents being responsible for any condition or damage resulting therefrom.

(Ord. 35-3006. Passed 8-10-06.)

#### **1195.05 REGULATED ACTIVITIES.**

(a) This Chapter requires that a Storm Water Pollution Prevention Plan be developed and implemented for all parcels of one (1) acre or more and on which any regulated activity of Section 1195.01(c) is proposed.

(b) At the request of the City Engineer, the following activities may be required to submit an Abbreviated Storm Water Pollution Prevention Plan:

- (1) New single-family residential construction regardless of parcel size.
- (2) Additions or accessory buildings for single-family residential construction regardless of parcel size.
- (3) All non-residential construction on parcels of less than one (1) acre.
- (4) General clearing activities not related to construction and regardless of parcel size.

(Ord. 35-2006. Passed 8-10-06.)

#### **1195.06 APPLICATION PROCEDURES.**

(a) Soil Disturbing Activities Submitting a Storm Water Pollution Prevention Plan: The applicant shall submit two (2) sets of the SWP3 and the applicable fees to the SWCD as follows:

- (1) For subdivisions: After the approval of the preliminary plat and with submittal of the improvement plans.
- (2) For other construction projects: Before issuance of a building permit by the Building Department.
- (3) For general clearing projects: Prior to start of clearing or issuance of a building permit by the Building Department.

(b) Soil Disturbing Activities Submitting an Abbreviated Storm Water Pollution Prevention Plan: The applicant shall submit two (2) sets of the Abbreviated SWP3 and the applicable fees to the City Engineer as follows:

- (1) For single-family home construction: Before issuance of a building permit by the Building Department.
- (2) For other construction projects: Before issuance of a building permit by the Building Department.
- (3) For general clearing projects: Prior to start of clearing or issuance of a building permit by the Building Department.

(c) The SWCD and/or the City Engineer shall review the plans submitted under Section 1195.06 (a) or (b) for conformance with current NPDES permit requirements and this Chapter and approve, or return with comments and recommendations for revisions. A plan

rejected because of deficiencies shall receive a narrative report stating specific problems and the procedures for filing a revised plan.

(d) Soil disturbing activities shall not begin, final plat approvals shall not be issued, zoning certificates and building permits shall not be issued without an approved SWP3 or Abbreviated SWP3.

(e) A pre-construction meeting may be held with the City Engineer and/or SWCD inspector or their designee, at their discretion, prior to earthwork activities. The developer, contractor, and design engineer should be in attendance at the pre-construction meeting.

(f) SWP3 for individual sublots in a subdivision will not be approved unless the larger common plan of development or sale containing the subplot is in compliance with this Chapter.

(g) Approvals issued in accordance with this Chapter shall remain valid for two years. If regulations concerning erosion and sediment control or storm water quality change prior to the beginning of active construction, a new SWPPP may be requested by the SWCD or City Engineer.

(Ord. 35-2006. Passed 8-10-06.)

#### **1195.07 STORM WATER POLLUTION PREVENTION PLAN.**

(a) In order to control pollution of water resources and wetlands, the applicant shall submit a SWP3 in accordance with the requirements of this Chapter. The SWP3 must comply at a minimum to the most recent Ohio EPA NPDES Permit. For specific requirements of a SWP3, the designer shall refer to the NPDES Ohio EPA General Construction Permit and the SWCD SWP3 Check List. The SWP3 must address erosion and sediment control during construction as well as post construction water quality practices. Post construction practices must meet the requirements of the NPDES Ohio EPA General Construction Permit and the City and/or County storm water management technical guidelines.

(b) The SWP3 shall be certified by a professional engineer, a registered surveyor, certified professional erosion and sediment control specialist, or a registered landscape architect.

(c) The SWP3 shall incorporate measures as recommended by the most current edition of Rainwater and Land Development as published by the Ohio Department of Natural Resources.

(d) Trapping Efficiency: All sediment basins and traps must maintain a minimum seventy-five percent (75%) trapping efficiency throughout the construction period as determined by engineering calculations contained within the applicable County Water Quality and Trapping Efficiency Program. The approved program to determine trapping efficiency is available through the Soil and Water Conservation District.

(e) Soils Engineering Report: The City Engineer, or the County SWCD may require the SWP3 to include a Soils Engineering Report based upon his/her determination that the conditions of the soils are unknown or unclear to the extent that additional information is required to protect against erosion or other hazards. This report shall be based upon adequate and necessary test borings, and shall contain all the information listed below. Recommendations included in the report and reviewed by the City Engineer or the SWCD shall be incorporated in the grading plans and/or other specifications for site development.

(1) Data regarding the nature, distribution, strength, stability, and erodibility of existing soils.

(2) If applicable, data regarding the nature, distribution, strength, stability, and erodibility of the soil to be placed on the site.

(3) Conclusions and recommendations for grading procedures.

(4) Conclusions and recommended designs for interim soil stabilization devices and measures, and for permanent soil stabilization after construction is completed.

(5) Design criteria for corrective measures when necessary.

(6) Opinions and recommendations concerning the stability of the site.

(Ord. 35-2006. Passed 8-10-06.)

#### **1195.08 ABBREVIATED STORM WATER POLLUTION PREVENTION PLAN.**

(a) In order to control sediment pollution of water resources and wetlands, the applicant shall submit an Abbreviated SWP3 in accordance with the requirements of this Chapter.

(b) The Abbreviated SWP3 shall be developed in accordance with guidance provided by the SWCD SWP3 checklist or comparable checklist from the City.

(Ord. 35-2006. Passed 8-10-06.)

#### **1195.09 COMPLIANCE WITH LOCAL, STATE, AND FEDERAL REGULATIONS.**

Approvals issued in accordance with this Chapter do not relieve the applicant of responsibility for obtaining all other necessary permits and/or approvals from the Ohio EPA, the US Army Corps of Engineers, and other federal, state, and/or county agencies. If requirements vary, the most restrictive requirement shall prevail. These permits may include, but are not limited to, those listed below. All submittals are required to show proof of compliance with all state and federal regulations.

(a) Ohio EPA NPDES Permits authorizing storm water discharges associated with construction activity or the most current version thereof: Proof of compliance with these requirements shall be the applicant's Notice of Intent (NOI) number from Ohio EPA, a copy of the Ohio EPA Director's Authorization Letter for the NPDES Permit, or a letter from the site owner certifying and explaining why the NPDES Permit is not applicable.

(b) Section 401 of the Clean Water Act: Proof of compliance shall be a copy of the Ohio EPA Water Quality Certification application tracking number, public notice, project approval, or a letter from the site owner certifying that a qualified professional has surveyed the site and determined that Section 401 of the Clean Water Act is not applicable. Wetlands, and other waters of the United States, shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under this Chapter.

(c) Ohio EPA Isolated Wetland Permit: Proof of compliance shall be a copy of Ohio EPA's Isolated Wetland Permit application tracking number, public notice, project approval, or a letter from the site owner certifying that a qualified professional has surveyed the site and determined that Ohio EPA's Isolated Wetlands Permit is not applicable. Isolated wetlands shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under this Chapter.

(d) Section 404 of the Clean Water Act: Proof of compliance shall be a copy of the U.S. Army Corps of Engineers Individual Permit application, public notice, or project approval, if an Individual Permit is required for the development project. If an Individual Permit is not required, the site owner shall submit proof of compliance with the U.S. Army Corps of Engineer's Nationwide Permit Program. This shall include one of the following:

(1) A copy of the wetland delineation prepared in accordance with the U.S. Army Corps Wetlands Delineation Manual prepared by a qualified wetland biologist and/or Jurisdictional Determination issued by the U.S. Army Corps of Engineers.

(2) A site plan showing that any proposed fill of waters of the United States conforms to the general and special conditions

specified in the applicable Nationwide Permit. Wetlands, and other waters of the United States, shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under this Chapter.

- (e) Ohio Dam Safety Law: Proof of compliance shall be a copy of the ODNR Division of Water permit application tracking number, a copy of the project approval letter from the ODNR Division of Water, or a letter from the site owner certifying and explaining why the Ohio Dam Safety Law is not applicable.
- (f) Riparian Setback Ordinance: Proof of compliance shall be a copy of the SWCD approval letter. Riparian setbacks must be shown on the SWP3.  
(Ord. 24-2019. Passed 2-28-19.)

#### **1195.10 PERFORMANCE STANDARDS.**

The SWP3 must contain a description and location of all appropriate BMPs for each construction operation. Prior to the start of grading and within seven days from the start of grubbing, the applicant must implement such controls. The SWP3 must clearly describe for each major construction activity the appropriate control measures; the general sequence during the construction process under which the measures will be implemented; and the person(s) responsible for implementation.

- (a) No project subject to this Chapter shall commence without a SWP3 or Abbreviated SWP3 approved by the SWCD and/or City Engineer.
- (b) No project subject to this Chapter shall commence without a pre-construction meeting, if required, being held with the City Engineer and/or SWCD. It will be the developer or land owner's responsibility to contact the SWCD and/or City Engineer.

The controls shall include the following minimum components:

##### **1. DURING ACTIVE CONSTRUCTION.**

- (a) **NON-STRUCTURAL PRESERVATION MEASURES:** The applicant must make use of practices that preserve the existing natural condition to the maximum extent practicable. Such practices may include preserving riparian areas, preserving existing vegetation and vegetative buffer strips, phasing of construction operations in order to minimize the amount of disturbed land at any one time, and designation of tree preservation areas or other protective clearing or grubbing practices.
  - (1) Stream protection. The requirements of the T.C.O. Chapter 1190 for Riparian Setbacks shall be followed.
  - (2) Wetland Protection. The setback requirements of the City Subdivision and Zoning Regulations shall be followed in addition to County, State, and Federal regulations.
- (b) **EROSION CONTROL PRACTICES:** The applicant must make use of erosion controls that are capable of providing cover over disturbed soils. A description of control practices designed to restabilize disturbed areas after grading or construction shall be included in the SWP3. The SWP3 must provide specifications for stabilization of all disturbed areas of the site and provide guidance as to which method of stabilization will be employed for any time of the year. Such practices may include: temporary seeding, permanent seeding, mulching, matting, sod stabilization, vegetative buffer strips, phasing of construction operations, the use of construction entrances, and the use of alternative ground cover.
- (c) **RUNOFF CONTROL PRACTICES:** The applicant must make use of measures that control the flow of runoff from disturbed areas so as to prevent erosion. Such practices may include rock check dams, pipe slope drains, diversions to direct flow away from exposed soils and protective grading practices. These practices shall divert runoff away from disturbed areas and steep slopes where practicable.
- (d) **SEDIMENT CONTROL PRACTICES:** The applicant must install structural practices that shall store runoff, allowing sediments to settle and/or divert flows away from exposed soils or otherwise limit runoff from exposed areas. Structural practices shall be used to control erosion and trap sediment from a site remaining disturbed for more than fourteen days. Such practices may include, among others: sediment settling ponds, silt fences, storm drain inlet protection, and earth diversion dikes or channels which direct runoff to a sediment settling pond. All sediment control practices must be capable of ponding runoff in order to be considered functional. Earth diversion dikes or channels alone are not considered a sediment control practice unless used in conjunction with a sediment settling pond.
- (e) **NON-SEDIMENT POLLUTANT CONTROLS:** No solid or liquid waste, including building materials, shall be discharged in storm water runoff. The applicant must implement site best management practices to prevent toxic materials, hazardous materials, or other debris from entering water resources or wetlands.
- (f) **COMPLIANCE WITH OTHER REQUIREMENTS:** The SWP3 shall be consistent with applicable State and/or local waste disposal, sanitary sewer, or septic system regulations, including provisions prohibiting waste disposal by open burning, and shall provide for the proper disposal of contaminated soils located within the development area.
- (g) **TRENCH AND GROUND WATER CONTROL:** There shall be no sediment-laden or turbid discharges to water resources or wetlands resulting from dewatering activities. If trench or ground water contains sediment, it must pass through a sediment-settling pond or other equally effective sediment control device, prior to being discharged from the construction site. Alternatively, sediment may be removed by settling in place or by dewatering into a sump pit, filter bag or comparable practice. Ground water dewatering which does not contain sediment or other pollutants is not required to be treated prior to discharge. However, care must be taken when discharging ground water to ensure that it does not become pollutant-laden by traversing over disturbed soils or other pollutant sources.
- (h) **INTERNAL INSPECTIONS:** All controls on the site shall be inspected by the applicant's agent at least once every seven calendar days and within 24 hours after any storm event greater than one-half inch of rain per 24 hour period. The applicant shall assign qualified inspection personnel to conduct these inspections to ensure that the control practices are functional and to evaluate whether the SWP3 is adequate, or whether additional control measures are required. Qualified inspection personnel are individuals with knowledge and experience in the installation and maintenance of sediment and erosion controls.
- (i) **MAINTENANCE:** The SWP3 shall be designed to minimize maintenance requirements. All control practices shall be maintained and repaired as needed to ensure continued performance of their intended function until final

stabilization. All sediment control practices must be maintained in a functional condition until all up slope areas they control reach final stabilization. The applicant shall provide a description of maintenance procedures needed to ensure the continued performance of control practices and shall ensure a responsible party and adequate funding to conduct this maintenance, all as determined by the SWCD.

When inspections reveal the need for repair, replacement, or installation of erosion and sediment control BMPs, the following procedures shall be followed:

- (1) When practices require repair or maintenance. If an inspection reveals that a control practice is in need of repair or maintenance, with the exception of a sediment-settling pond, it must be repaired or maintained within three (3) days of the inspection. Sediment settling ponds must be repaired or maintained within ten (10) days of the inspection.
  - (2) When practices fail to provide their intended function. If an inspection reveals that a control practice fails to perform its intended function as detailed in the SWP3 and that another, more appropriate control practice is required, the SWP3 must be amended and the new control practice must be installed within ten (10) days of the inspection.
  - (3) When practices depicted on the SWP3 are not installed. If an inspection reveals that a control practice has not been implemented in accordance with the schedule, the control practice must be implemented within ten (10) days from the date of the inspection. If the internal inspection reveals that the planned control practice is not needed, the record must contain a statement of explanation as to why the control practice is not needed.
- (j) FINAL STABILIZATION: Final stabilization is reached when 75% of the disturbed area has been protected from erosion by vegetation, clean stone, pavement, or other acceptable means.

## 2. POST CONSTRUCTION WATER QUALITY PRACTICES.

- (a) NON-STRUCTURAL WATER QUALITY PRACTICES: Non-structural post construction best management practices include preservation, planning, or procedures that direct development away from water resources or limit creation of impervious surfaces. Practices such as conservation easements, riparian and wetland setbacks, and conservation subdivision design are all non-structural controls.
- (1) All non-structural water quality practices must be protected from disturbance through the construction phase of the project.
  - (2) All non-structural water quality practices must be protected in perpetuity through the use of appropriate legal tools. All easement or conservation areas must appear on the final plat and be disclosed to potential buyers.
- (b) STRUCTURAL WATER QUALITY PRACTICES: Structural post construction best management practices are permanent features constructed to provide treatment of storm water runoff either through storage, filtration, or infiltration.
- (1) All structural water quality practices must be established prior to the completion of the project. Structural water quality practices should be made functional once the disturbed areas on site are stabilized. If detention/retention facilities were used for sediment control during development, sediments must be removed prior to the basin being used for post construction storm water quality.
  - (2) MAINTENANCE. The post construction water quality practice must be maintained in perpetuity by those parties identified in the SWPPP, the applicable recorded plat, or other maintenance requirements of the City.
- (Ord. 35-2006. Passed 8-10-06.)

### **1195.11 FEES.**

(a) A Storm Water Pollution Prevention Plan review, filing, and inspection fee is part of a complete submittal to the SWCD. Fees are required to be submitted to the SWCD before the review process begins. Fees shall be established by the SWCD.

(b) The City Engineer may, at his discretion, have any Abbreviated Storm Water Pollution Prevention Plan reviewed by the SWCD. All fees associated with the SWCD review shall be the responsibility of the developer or owner.  
(Ord. 35-2006. Passed 8-10-06.)

### **1195.12 BOND.**

If a Storm Water Pollution Prevention Plan or Abbreviated Storm Water Pollution Prevention Plan is required by this Chapter, soil disturbing activities shall not be permitted until a performance guarantee in the form of a performance bond, irrevocable letter of credit, or cash has been deposited with the Director of Public Service. The bond amount shall be as established by the Director of Public Service. The performance guarantee will be used for the City to perform the obligations otherwise to be performed by the owner of the development area as stated in this Chapter and to allow all work to be performed as needed in the event that the applicant fails to comply with the provisions of this Chapter. The performance guarantee shall be returned after all work required by this Chapter has been completed and final stabilization has been reached, all as determined by the SWCD and/or City Engineer.  
(Ord. 35-2006. Passed 8-10-06.)

### **1195.13 ENFORCEMENT.**

- (a) All development areas will be subject to external inspections by the City and/or SWCD to ensure compliance with the approved SWP3 or Abbreviated SWP3.
- (b) After each external inspection, the City and/or SWCD may prepare and distribute a status report to the applicant.
- (c) If an external inspection determines that operations are being conducted in violation of the approved SWP3 or Abbreviated SWP3, the City may take action as detailed in Section 1195.14 of this regulation.

(Ord. 35-2006. Passed 8-10-06.)

### **1195.14 VIOLATIONS.**

- (a) No person shall violate or cause or knowingly permit to be violated any of the provisions of this regulation, or fail to comply with any of such provisions or with any lawful requirements of any public authority made pursuant to this regulation, or knowingly use or cause or permit the use of any lands in violation of this regulation or in violation of any permit granted under this regulation.
- (b) If it appears that a violation of any of these regulations has occurred, the owner and developer will be notified of deficiencies or non-compliance in writing by mail. If within 21 days after receipt of the letter, the owner or developer has not rectified the deficiency or

received approval of plans for its correction, the deficiency or non-compliance shall be reported to the Director of Law for immediate enforcement of these regulations. Inspections by the City or SWCD do not relinquish the responsibility of the owner to comply with Ohio EPA NPDES inspection requirements.

(c) Upon notice, the Director of Law may suspend any active soil disturbing activity and may require immediate erosion and sediment control measures whenever he or she determines that such activity is not meeting the intent of this Chapter. Such notice shall be in writing, shall be given to the applicant, and shall state the conditions under which work may be resumed. In instances, however, where the Director of Law and/or designee finds that immediate action is necessary for public safety or the public interest, he or she may require that work be stopped upon verbal order pending issuance of the written notice.

(d) The City reserves the right to deny the issuance of any further plat approvals or building inspections for the property in question until the site is brought into compliance with this Chapter.

(Ord. 35-2006. Passed 8-10-06.)

#### **1195.15 APPEALS.**

Any person aggrieved by any order, requirement, determination, or any other action or inaction by the City in relation to this Chapter may appeal to the Court of Common Pleas.

(Ord. 35-2006. Passed 8-10-06.)

#### **1195.99 PENALTY.**

(a) A violation of this Chapter is subject to the penalties and procedures set forth in Chapter 1199. Each day a violation occurs constitutes a separate offense.

(b) The imposition of any other penalties provided herein shall not preclude the City from instituting an appropriate action or proceeding in a Court of proper jurisdiction to prevent an unlawful development, or to restrain, correct, or abate a violation, or to require compliance with the provisions of this Chapter or other applicable laws, ordinances, rules, or regulations, or the orders of the City.

(Ord. 35-2006. Passed 8-10-06.)

### **CHAPTER 1196**

#### **Illicit Discharge and Illegal Connection Control**

##### **1196.01 Purpose and scope.**

##### **1196.02 Applicability.**

##### **1196.03 Definitions.**

##### **1196.04 Disclaimer of liability.**

##### **1196.05 Conflicts, severability, nuisances and responsibility.**

##### **1196.06 Responsibility for administration.**

##### **1196.07 Discharge and connection prohibitions.**

##### **1196.08 Monitoring of illicit discharges and illegal connections.**

##### **1196.09 Enforcement.**

##### **1196.10 Remedies not exclusive.**

#### **CROSS REFERENCES**

Riparian setbacks - see P. & Z. Ch. 1190

Erosion and sediment control - see P. & Z. Ch. 1195

#### **1196.01 PURPOSE AND SCOPE.**

The purpose of this regulation is to provide for the health, safety, and general welfare of the citizens of the City of Tallmadge through the regulation of illicit discharges to the municipal separate storm sewer system (MS4). This regulation establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process as required by the Ohio Environmental Protection Agency (Ohio EPA). The objectives of this regulation are:

(a) To prohibit illicit discharges and illegal connections to the MS4.

(b) To establish legal authority to carry out inspections, monitoring procedures, and enforcement actions necessary to ensure compliance with this regulation.

(Ord. 87-2012. Passed 12-13-12.)

#### **1196.02 APPLICABILITY.**

This regulation shall apply to all residential, commercial, industrial, or institutional facilities responsible for discharges to the MS4 and on any lands in the City of Tallmadge, except for those discharges generated by the activities detailed in Section 1196.07 (a)(1) to (a)(3) of this regulation. (Ord. 87-2012. Passed 12-13-12.)

#### **1196.03 DEFINITIONS.**

The words and terms used in this regulation, unless otherwise expressly stated, shall have the following meaning:

(a) Best Management Practices (BMPs): means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to storm water. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

(b) Community: means the City of Tallmadge, its designated representatives, boards, or commissions.

(c) Environmental Protection Agency or United States Environmental Protection Agency (USEPA): means the United States Environmental Protection Agency, including but not limited to the Ohio Environmental Protection Agency (Ohio EPA), or any duly authorized official of said agency.

(d) Floatable Material: in general this term means any foreign matter that may float or remain suspended in the water column, and

includes but is not limited to, plastic, aluminum cans, wood products, bottles, and paper products.

- (e) **Hazardous Material:** means any material including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- (f) **Illicit Discharge:** as defined at 40 C.F.R. 122.26 (b)(2) means any discharge to an MS4 that is not composed entirely of storm water, except for those discharges to an MS4 pursuant to a NPDES permit or noted in Section 1196.07 of this regulation.
- (g) **Illegal Connection:** means any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the MS4.
- (h) **Municipal Separate Storm Sewer System (MS4):** as defined at 40 C.F.R. 122.26 (b)(8), municipal separate storm sewer system means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
  - (1) Owned or operated by a State, city, town, borough, county, parish, district, municipality, township, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over sewage, industrial wastes, including special districts under State law such as a sewer district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to waters of the United States;
  - (2) Designed or used for collecting or conveying storm water;
  - (3) Which is not a combined sewer; and
  - (4) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 C.F.R. 122.2.
- (i) **National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit:** means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general areawide basis.
- (j) **Off-Lot Discharging Household Sewage Treatment System:** means a system designed to treat household sewage on-site and discharges treated wastewater effluent off the property into a storm water or surface water conveyance or system.
- (k) **Owner/Operator:** means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or on the owner's behalf.
- (l) **Pollutant:** means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, solvents, oil and other automotive fluids, non-hazardous liquid and solid wastes, yard wastes, refuse, rubbish, garbage, litter or other discarded or abandoned objects, floatable materials, pesticides, herbicides, fertilizers, hazardous materials, wastes, sewage, dissolved and particulate metals, animal wastes, residues that result from constructing a structure, and noxious or offensive matter of any kind.
- (m) **Storm Water:** any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- (n) **Wastewater:** The spent water of a community. From the standpoint of a source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions.  
(Ord. 87-2012. Passed 12-13-12.)

#### **1196.04 DISCLAIMER OF LIABILITY.**

Compliance with the provisions of this regulation shall not relieve any person from responsibility for damage to any person otherwise imposed by law. The provisions of this regulation are promulgated to promote the health, safety, and welfare of the public and are not designed for the benefit of any individual or for the benefit of any particular parcel of property.  
(Ord. 87-2012. Passed 12-13-12.)

#### **1196.05 CONFLICTS, SEVERABILITY, NUISANCES AND RESPONSIBILITY.**

- (a) Where this regulation is in conflict with other provisions of law or ordinance, the most restrictive provisions, as determined by the City of Tallmadge, shall prevail.
- (b) If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.
- (c) This regulation shall not be construed as authorizing any person to maintain a nuisance on their property, and compliance with the provisions of this regulation shall not be a defense in any action to abate such a nuisance.
- (d) Failure of the City of Tallmadge to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the site owner from the responsibility for the condition or damage resulting therefrom, and shall not result in the City of Tallmadge, its officers, employees, or agents being responsible for any condition or damage resulting therefrom.

(Ord. 87-2012. Passed 12-13-12.)

#### **1196.06 RESPONSIBILITY FOR ADMINISTRATION.**

The City of Tallmadge shall administer, implement, and enforce the provisions of this regulation. The City of Tallmadge may contract with the Summit County Public Health or the Portage County Health Department to conduct inspections and monitoring and to assist with enforcement actions.  
(Ord. 87-2012. Passed 12-13-12.)

#### **1196.07 DISCHARGE AND CONNECTION PROHIBITIONS.**

- (a) **Prohibition of Illicit Discharges.** No person shall discharge, or cause to be discharged, an illicit discharge into the MS4. The commencement, conduct, or continuance of any illicit discharge to the MS4 is prohibited except as described below:
  - (1) Water line flushing; landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration; uncontaminated pumped ground water; discharges from potable water sources; foundation drains; air conditioning condensate; irrigation water; springs; water from crawl space pumps; footing drains; lawn watering; individual residential car washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; street wash water; and discharges or flows from fire fighting activities. These discharges are exempt until such

time as they are determined by the City of Tallmadge to be significant contributors of pollutants to the MS4.

- (2) Discharges specified in writing by the City of Tallmadge as being necessary to protect public health and safety.
- (3) Discharges from off-lot discharging household sewage treatment systems existing prior to January 1, 2007, and permitted by the Summit County Public Health or the Portage County Health Department for the purpose of discharging treated sewage effluent in accordance with Ohio Administrative Code 3701-29, or other applicable Summit County Public Health or the Portage County Health Department regulations, until such time as the Ohio Environmental Protection Agency issues an NPDES permitting mechanism for household sewage treatment systems existing prior to January 1, 2007. These discharges are exempt unless such discharges are deemed to be creating a public health nuisance by the Summit County Public Health or the Portage County Health Department. Discharges from new or replacement off-lot household sewage treatment systems installed after January 1, 2007, are not exempt from the requirements of this regulation.

In compliance with the City of Tallmadge Storm Water Management Program, discharges from all offlot discharging household sewage treatment systems must either be eliminated or have coverage under an appropriate NPDES permit issued and approved by the Ohio Environmental Protection agency. When such permit coverage is available for systems existing prior to January 1, 2007, discharges from off-lot discharging household sewage treatment systems existing prior to January 1, 2007, will no longer be exempt from the requirements of this regulation.

(b) Prohibition of Illegal Connections. The construction, use, maintenance, or continued existence of illegal connections to the MS4 is prohibited.

- (1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (2) A person is considered to be in violation of this regulation if the person connects a line conveying illicit discharges to the MS4, or allows such a connection to continue.

(Ord. 87-2012. Passed 12-13-12.)

#### **1196.08 MONITORING OF ILLICIT DISCHARGES AND ILLEGAL CONNECTIONS.**

(a) Establishment of an Illicit Discharge and Illegal Connection Monitoring Program. The City of Tallmadge shall establish a program to detect and eliminate illicit discharges and illegal connections to the MS4. This program shall include the mapping of the MS4, including MS4 outfalls and household sewage treatment systems; the routine inspection of storm water outfalls to the MS4, and the systematic investigation of potential residential, commercial, industrial, and institutional facilities for the sources of any dry weather flows found as the result of these inspections.

(b) Inspection of Residential, Commercial, Industrial, or Institutional Facilities.

- (1) The City of Tallmadge shall be permitted to enter and inspect facilities subject to this regulation as often as may be necessary to determine compliance with this regulation.
- (2) The City of Tallmadge shall have the right to set up at facilities subject to this regulation such devices as are necessary to conduct monitoring and/or sampling of the facility's storm water discharge, as determined by the City of Tallmadge.
- (3) The City of Tallmadge shall have the right to require the facility owner/operator to install monitoring equipment as necessary. This sampling and monitoring equipment shall be maintained at all times in safe and proper operating condition by the facility owner/operator at the owner/operator's expense. All devices used to measure storm water flow and quality shall be calibrated by the City of Tallmadge or Summit County Public Health or the Portage County Health Department to ensure their accuracy.
- (4) Any temporary or permanent obstruction to safe and reasonable access to the facility to be inspected and/or sampled shall be promptly removed by the facility's owner/operator at the written or oral request of the City of Tallmadge and shall not be replaced. The costs of clearing such access shall be borne by the facility owner/operator.
- (5) Unreasonable delays in allowing the City of Tallmadge access to a facility subject to this regulation for the purposes of illicit discharge inspection is a violation of this regulation.
- (6) If the City of Tallmadge is refused access to any part of the facility from which storm water is discharged, and the City of Tallmadge demonstrates probable cause to believe that there may be a violation of this regulation, or that there is a need to inspect and/or sample as part of an inspection and sampling program designed to verify compliance with this regulation or any order issued hereunder, or to protect the public health, safety, and welfare, the City of Tallmadge may seek issuance of a search warrant, civil remedies including but not limited to injunctive relief, and/or criminal remedies from any court of appropriate jurisdiction.
- (7) Any costs associated with these inspections shall be assessed to the facility owner/operator.

(Ord. 87-2012. Passed 12-13-12.)

#### **1196.09 ENFORCEMENT.**

(a) Notice of Violation. When the City of Tallmadge finds that a person has violated a prohibition or failed to meet a requirement of this regulation, the City of Tallmadge may order compliance by written Notice of Violation. Such notice must specify the violation and shall be hand delivered, and/or sent by registered mail, to the owner/operator of the facility. Such notice may require the following actions:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit discharges or illegal connections;
- (3) That violating discharges, practices, or operations cease and desist;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; or
- (5) The implementation of source control or treatment BMPs.

(b) If abatement of a violation and/or restoration of affected property is required, the Notice of Violation shall set forth a deadline within which such remediation or restoration must be completed. Said Notice shall further advise that, should the facility owner/operator fail to remediate or restore within the established deadline, a legal action for enforcement may be initiated.

(c) Any person receiving a Notice of Violation must meet compliance standards within the time established in the Notice of Violation.  
(d) Administrative Hearing. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, the City of Tallmadge shall schedule an administrative hearing to determine reasons for non-compliance and to determine the next enforcement activity. Notice of the administrative hearing shall be hand delivered and/or sent registered mail. Such administrative hearing shall be before the Director of Public Service, the Director of Law, and the Chairperson of the Public Utilities Committee of Council.

(e) Injunctive Relief. It shall be unlawful for any owner/operator to violate any provision or fail to comply with any of the requirements of this regulation pursuant to Ohio R.C. 3709.211. If an owner/operator has violated or continues to violate the provisions of this regulation, the City of Tallmadge may petition for a preliminary or permanent injunction restraining the owner/operator from activities that would create further violations or compelling the owner/operator to perform abatement or remediation of the violation.  
(Ord. 87-2012. Passed 12-13-12.)

#### **1196.10 REMEDIES NOT EXCLUSIVE.**

The remedies listed in this regulation are not exclusive of any other remedies available under any applicable federal, state or local law and it is in the discretion of the City of Tallmadge to seek cumulative remedies.  
(Ord. 87-2012. Passed 12-13-12.)

### **CHAPTER 1199**

#### **Violation, Remedies and Fees**

##### **1199.01 Violation.**

##### **1199.02 Notice of violation.**

##### **1199.03 Remedies.**

##### **1199.04 Fees.**

##### **1199.05 Schedule of fees.**

#### **CROSS REFERENCES**

Violation of zoning ordinances - see Ohio R.C. 713.13

Administration and enforcement - see P. & Z. Ch. 1135

#### **1199.01 VIOLATION.**

Any building or structure that is or is proposed to be located, erected, constructed, reconstructed, enlarged, changed, maintained or used or any land that is proposed to be used in violation of this Chapter or any amendment or supplement thereto, the Mayor, the Director of Law or, the Zoning Inspector or any adjacent or neighboring property owner who would be specifically damaged by such violation may, in addition to other remedies provided by law, institute appropriate action or proceedings to prevent such unlawful location, erection, construction, reconstruction, alteration, conversion, maintenance or use; to restrain, correct or abate such violation to prevent the occupancy of the said building, structure or land or to prevent any illegal act, conduct, business or use in or about, such premises.  
(Ord. 89-1997. Passed 12-11-97.)

#### **1199.02 NOTICE OF VIOLATION.**

The notice of any violation of this Zoning Code shall be as follows:

(a) Whenever the Zoning Inspector determines that there is a violation of any provision of this Zoning Code, a notice of such violation shall be issued. Such notice shall:

- (1) Be in writing;
- (2) Identify the violation;
- (3) Include a statement of the reason or reasons why it is being issued and refer to the section of this Zoning Code being violated;  
and
- (4) State the time by which the violation shall be corrected.

(b) Service of notice of the violation shall be as follows:

- (1) By personal delivery to the person or persons responsible, or by leaving the notice at the usual place of residence of the owner with a person of sixteen (16) years or older; or
- (2) By Certified Mail, or first class mail, addressed to the person or persons responsible at a last known address. Service shall be deemed complete when the fact of the mailing is entered of record, provided that the First Class mail envelope is not returned by the Postal Authorities with an endorsement showing failure of delivery; or
- (3) By posting a copy of the notice form in a conspicuous place on the premises found in violation.

(Ord. 89-1997. Passed 12-11-97.)

(c) For purposes of giving notice of violations, once the Zoning Inspector has given notice of a specific violation of this code, that notice shall be deemed sufficient for each subsequent same violation.

(Ord. 37-2005. Passed 5-12-05.)

#### **1199.03 REMEDIES.**

The following remedies shall apply to violations of this Zoning Code:

##### **(a) Prohibitions.**

- (1) No person shall fail or refuse to comply with an order issued by the Zoning Inspector. A separate offense shall be deemed committed each day upon which a violation occurs or continues.
- (2) No person shall construct, modify, alter, use or occupy any structure or property in violation of the Tallmadge Zoning Code. A separate offense shall be deemed committed each day upon which a violation occurs or continues.

##### **(b) Penalties.**

- (1) Whosoever violates this section is guilty of a minor misdemeanor for each offense.
- (2) If within one year of the date of the offense the offender has been convicted of or pleads guilty to another violation of Section 1199.03 A, the offender is guilty of a misdemeanor of the third degree.



- (c) Civil Remedies. The City of Tallmadge, the Mayor on behalf of the City of Tallmadge or any officer designated by the Mayor on behalf of the City of Tallmadge may, in addition to the criminal remedies provided in this Zoning Code, file suit for injunction against any violation of this Zoning Code, or if the violation has caused damages to the City of Tallmadge for a judgement for damages and any person, property owner or occupant of property who can show that the person, property owner or occupant of property has suffered harm or whose property has suffered harm as a result of violations of this Zoning Code may file suit for injunction or damages to the fullest extent provided by the law.

(Ord. 89-1997. Passed 12-11-97.)

#### **1199.04 FEES.**

(a) The fees for all applicant costs incurred in this Chapter shall be established by City Council. Furthermore, no plan shall be accepted for filing and processing, as provided in this Chapter, unless and until a filing fee is paid to the City. A fee schedule, as adopted by City Council, shall be available in the office of the Zoning Inspector.

(b) The applicant shall be responsible for the expenses incurred by the City in reviewing the plan or any modifications to the plan. Such expenses may include items such as the cost of professional services including expenses and legal fees in connection with reviewing the plan, prepared reports, the publication and mailing of public notice in connection therewith, and any other reasonable expenses directly attributable thereon.

(c) At the time of submitting a site plan to the Planning and Zoning Commission for consideration, the applicant shall make a deposit in the office of the Zoning Inspector in the amount equal to the estimated cost of the City's expenses.

(Ord. 89-1997. Passed 12-11-97.)

#### **1199.05 SCHEDULE OF FEES.**

The City Council shall, by Ordinance, establish a schedule of fees for applications for zoning certificates, amendments, appeals, variances, conditional zoning certificates, site plan approvals, similar permitted uses, certificates of appropriateness, minor modification of a use or site plan of an approved conditional use, and other procedures and services pertaining to the administration and enforcement of this Zoning Code, after considering the recommendations of the Zoning Inspector with respect to actual administrative costs, both direct and indirect. The schedule of fees shall be available in the office of the Zoning Inspector, and may be altered or amended only by the City Council. Until all such appropriate fees, charges, and expenses have been paid in full, no action shall be taken on any application, appeal, or administrative procedure.

(Ord. 59-2001. Passed 5-24-01.)

### **CODIFIED ORDINANCES OF TALLMADGE**