



CITY COUNCIL ACTION REPORT

DATE: December 16, 2009

TO: John Szerlag, City Manager

FROM: Mark F. Miller, Acting Assistant City Manager/Economic Development Services
R. Brent Savidant, Acting Planning Director

SUBJECT: Public Hearing – Zoning Ordinance Text Amendment (File Number ZOTA 241) –
Establishment of Zoning Administrator

A Planning Commission public hearing was held for this item on December 15, 2009. The Planning Commission recommended approval of the proposed text amendment.

The Economic Development Services Division of the City of Troy is undergoing restructuring. The intent of the restructuring effort is to improve administrative efficiencies, therefore creating a stronger investment environment in Troy. Zoning Ordinance functions presently provided by the Building Department will be assigned to the Planning Department. The City of Troy Zoning Ordinance assigns a number of responsibilities to the Building Inspector, including administrative and enforcement responsibilities and interpretation of the Zoning Ordinance.

It is standard practice for Zoning Ordinances in Michigan to include a provision that establishes a Zoning Administrator and defines the responsibilities of the Zoning Administrator. The proposed amendment establishes the Zoning Administrator position and clarifies that the Zoning Administrator will be responsible for administration and enforcement of the Zoning Ordinance, including the Board of Zoning Appeals. The City Manager will assign Zoning Administrator responsibility to an existing City employee; a new employee will not be hired to fill this position. At this time the Zoning Administrator will be the Assistant City Manager/Economic Development Services. The Planning Department will assist the Zoning Administrator in these tasks.

It should be noted that Chapter 3, Administrative Services, is proposed to be amended to provide the Zoning Administrator the authority to enforce the provisions of the Zoning Ordinance.

Approved as to form and legality:

Lori Grigg Bluhm, City Attorney

Attachments:

1. ZOTA 241, City Council Public Hearing Draft.
2. Draft Minutes, December 15, 2009 Planning Commission Special Meeting.
3. Letter of opposition, dated December 2, 2009.

Prepared by RBS/MFM

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CITY OF TROY
AN ORDINANCE TO AMEND
CHAPTER 39 OF THE CODE
OF THE CITY OF TROY
CITY COUNCIL PUBLIC HEARING DRAFT
ZOTA 241

The City of Troy ordains:

Section 1. Short Title

This Ordinance shall be known and may be cited as an amendment to Chapter 39 of the Code of the City of Troy.

Section 2. Amendment to Articles 22, 23, 28, 41, 42 and 43 of Chapter 39

Articles 22, 23, 28, 41, 42 and 43 of Chapter 39 of the Code of the City of Troy is amended to establish the position of Zoning Administrator and assign the responsibilities of the Zoning Administrator, to read as follows:

- 22.25.05 Outside seating of twenty (20) seats or less for restaurants, or other food service establishments, subject to the following conditions:
- A. Outside seating areas shall be enclosed by masonry walls, or decorative fencing elements, or shall otherwise be physically delineated or limited in a manner acceptable to the ~~Chief—Building—Inspector~~ Zoning Administrator.
 - B. Restaurants and food service establishments selling or serving alcoholic beverages shall further be subject to the requirements of the Michigan Liquor Control Commission.
 - C. Outside seating areas shall not occupy required sidewalk or landscape areas.
 - D. Setbacks for outside seating areas involving the construction of "structures" as defined by the Building Code shall be at least equal to those required for conventional buildings.
 - E. Applications for outside seating shall be accompanied by the following:
 - 1. Fully dimensioned plans or drawings indicating the location and layout of the proposed seating area within the subject site, and the method of delineation proposed.
 - 2. An affidavit signed by the owner of the property on which outside seating is proposed indicating concurrence with the proposed use.

- F. Approval of outside seating shall apply only to the business operation of the applicant and shall be designated by the granting of a Certificate of Approval by the Building Department. Any assignment, transfer, sale of the business, or change of management shall require the granting of a new Certificate of Approval by the Building Department.
- G. An appeal may be made to the City Council by any person or entity affected by a decision of the ~~Chief Building Inspector~~ Zoning Administrator, in relation to Zoning Ordinance requirements for outside customer seating, as provided for under sub-paragraph C of this Section. Appeals related to Building Code requirements may be presented to the Building Code Board of Appeals.

(03-06-95)

23.25.03 Outside seating of twenty (20) seats or less for restaurants, or other food service establishments, subject to the following conditions:

- A. Outside seating areas shall be enclosed by masonry walls, or decorative fencing elements, or shall otherwise be physically delineated or limited in a manner acceptable to the ~~Chief Building Inspector~~ Zoning Administrator.
- B. Restaurants and food service establishments selling or serving alcoholic beverages shall further be subject to the requirements of the Michigan Liquor Control Commission.
- C. Outside seating areas shall not occupy required sidewalk or landscape areas.
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- F. Approval of outside seating shall apply only to the business operation of the applicant and shall be designated by the granting of a Certificate of Approval by the Building Department. Any assignment, transfer, sale of the business, or change of management shall require the granting of a new Certificate of Approval by the Building Department.
- G. An appeal may be made to the City Council by any person or entity affected by a decision of the ~~Chief Building Inspector~~ Zoning Administrator, in relation to Zoning Ordinance requirements for outside customer seating, as provided for under sub-paragraph C of this Section. Appeals related to Building Code requirements may be presented to the Building Code Board of Appeals

28.25.03 The ~~Director of Building and Zoning~~ Zoning Administrator, by resolution may grant temporary permission for retail sales as an accessory to a wholesale or service facility within an M-1 District. Such permission may be granted for periods not to exceed three (3) days in length within any six (6) month period. In conjunction with approving such short-term accessory retail sales activities, the ~~Director of Building and Zoning~~ Zoning Administrator shall find that:

- A. Adequate parking is available on and immediately adjacent to the subject site.
- B. The proposed temporary use will have no negative impacts on adjacent properties.

Any appeals from these provisions may be considered by the City Council, and shall be subject to the procedures and the fees as established by the City Council for Zoning Variances.

40.61.00 TEMPORARY COVERING OF TEMPORARY USES OR ACTIVITIES:

The covering or enclosure of a temporary or short-term use or activity by means of an air-supported, tent-type or other temporary or readily removable covering may be permitted in any District, subject to the requirements and procedure as established by the ~~Director of Building and Zoning~~ Zoning Administrator, and subject further to the following conditions:

- A. The short-term events eligible for the use of such temporary covering are intended to be activities including, but not limited to, special events such as grand openings, corporate, institutional, or community celebrations.
- B. The short-term events must be clearly accessory or secondary to the principal uses or activities occurring within a permanent building on the same site. These provisions are not intended for the purpose of providing additional space for the principal uses on the site.
- C. The use of such temporary covering shall be limited to a maximum of five (5) consecutive days, and shall not occur more than four (4) times per

year on any individual site.

41.16.00 OUTDOOR SPECIAL EVENTS:

Short-term outdoor special events including, but not limited to, grand openings, corporate, institutional, or community celebrations, may be permitted in any District, subject to the requirements and procedures as established by the ~~Director of Building and Zoning~~ Zoning Administrator, and subject further to the following conditions:

- A. The short-term special event must be clearly accessory or secondary to the principal uses or activities occurring within a permanent building on the same site.
- B. Applications for approval of short-term special events shall be submitted to the ~~Building Department~~ Zoning Administrator, and shall be accompanied by plans indicating the layout of the subject site, and facilities proposed to be placed on the site, or alteration to the site, related to the special event.
- C. A short-term special event may be permitted for no more than seven (7) consecutive days within any twelve (12) month period.
- D. Facilities placed outdoors in conjunction with a short-term special event must be located at least one hundred (100) feet from any boundary of the site which abuts residentially zoned land.
- E. Permits for short-term outdoor special events shall also be subject to other applicable Ordinance and statutory provisions including, but not limited to, those related to noise/amplification, signs, health and sanitation.
- F. Any appeals from these provisions may be considered by the City Council, and shall be subject to the procedures and the fees as established by the City Council for Zoning Variances.

42.00.00 ARTICLE XLII ADMINISTRATION AND ENFORCEMENT

42.10.00 ENFORCEMENT:

Except where herein otherwise stated, the ~~Department of Building Inspection through its Director of Buildings and Inspection, officers, or employees,~~ Zoning Administrator or such deputies as designated by the Zoning Administrator shall administer and enforce the provisions of this Chapter. ~~The Building Inspector, hereinafter referred to, shall mean the Director of Buildings and Inspection, his officers, or employees.~~ The Zoning Administrator shall be designated by the City Manager.

42.15.00 DUTIES AND RESPONSIBILITIES

42.15.01 The duties and responsibilities of the Zoning Administrator shall include the following:

- A. Receive and review for completeness all applications for site plan review, special land uses, planned unit developments, or other matters that the Planning Commission is required to decide under this Ordinance and refer such applications to the Planning Commission for determination.
- B. Receive and review for completeness all applications for appeals, variances, or other matters that the Zoning Board of Appeals is required to decide under this Ordinance and refer such applications to the Zoning Board of Appeals for determination.
- C. Receive and review for completeness all applications for text or map (rezonings) amendments to this Ordinance and refer such applications to the Planning Commission and City Council for determination.
- D. Make periodic site inspections to determine Ordinance compliance.
- E. Implement the decisions of the Planning Commission, Zoning Board of Appeals, and City Council.
- F. Coordinate with the Building Inspector and Planning Director where necessary to administer this Ordinance.
- G. Investigate complaints regarding violations of the Zoning Ordinance.

42.15.02 The duties and responsibilities of the Building Inspector shall be to administer and enforce the Building Code adopted by the City of Troy, as well as perform duties and responsibilities as set forth in any other Ordinance adopted by the City of Troy.~~DUTIES OF BUILDING INSPECTOR:~~

~~The Building Inspector shall have the power to grant zoning compliance and occupancy permits, to make inspections of buildings or premises necessary to carry out his duties in the enforcement of this Chapter. It shall be unlawful for the Building Inspector to approve any plans or issue any permits or certificates of occupancy for an excavation or construction until he has inspected such plans in detail and found them to conform with this Chapter. The Building Inspector shall record all non-conforming uses existing at the effective date of Ordinance 23 for the purpose of carrying out the provisions of Section 40.50.00. Under no circumstances is the Building Inspector permitted to make changes to this chapter nor to vary the terms of this chapter in carrying out his duties as Building Inspector. The Building Inspector shall not refuse to issue a permit when conditions imposed by this chapter are complied with by the applicant despite violations of contracts, such as covenants or private agreements which may occur upon the granting of said permit.~~

42.50.00 FEES:
Fees for inspection and the issuance of permits or certificates or copies thereof required or issued under the provisions of this chapter may be collected by the ~~Department of Building Inspection~~City in advance of issuance. The amount of such fees shall be established by the City Council by resolution and shall cover the cost of inspection and supervision resulting from enforcement of this chapter.

Section 3. Amendment to Article XLIII of Chapter 39

Article XLIII of Chapter 39 of the Code of the City of Troy is amended to assign responsibilities for administering the Board of Zoning Appeals to the Zoning Administrator, to read as follows:

43.00.00 ARTICLE XLIII BOARD OF ZONING APPEALS

43.20.00 MEETINGS:
The Board of Zoning Appeals shall adopt rules of procedure. All meetings of the Board of Zoning Appeals shall be held at the call of the Chairperson and at times as the Board determines. All hearings conducted by the Board shall be open to the public. The ~~Director of Building and Zoning~~Zoning Administrator, or his representative shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact; and shall also keep records of its hearings and official action. Four (4) members of the Board shall constitute a quorum for the conduct of its business. The Board shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files and other evidence pertinent to matters before it.

(Rev. 05-04-98)

43.30.00 APPEALS:
An appeal may be made to the Board of Appeals by any person or entity affected by a decision of the ~~Director of Building and Zoning~~Zoning Administrator. The appeal shall be made by filing with the ~~Director of Building and Zoning~~Zoning Administrator an application for hearing before the Board of Zoning Appeals specifying the grounds for appeal. The ~~Director of Building and Zoning~~Zoning Administrator shall transmit to the Board all documents relating to the appeal.

(Rev. 05-04-98)

43.40.00 STAY:
An appeal stays the ~~Director of Building and Zoning~~Zoning Administrator's decision until the Board makes a decision unless the ~~Director of Building and Zoning~~Zoning Administrator certifies to the Board, after the appeal is filed, that a stay would cause imminent peril of life or property. If certification is made, the decision shall not be stayed unless ordered by the Board or the Circuit Court.

(Rev. 05-04-98)

43.45.00 HEARING ON APPEALS AND REQUESTS FOR VARIANCES:
The Board of Zoning Appeals shall schedule a hearing on all appeals and requests for variances and give notice as set forth below. The Board of Zoning Appeals shall make a decision on the appeal and/or variance request within a reasonable time. A party may appear at the hearing in person or by a representative. The Board of Zoning Appeals may reverse, affirm or modify the decision of the ~~Director of Building and Zoning~~Zoning Administrator. The Board of Appeals may grant or deny a request for a variance, or grant a lesser variance than requested. The Board of Appeals may impose conditions allowed by this ordinance and the Michigan Zoning Enabling Act.

(Enacted: 09-18-06; Effective: 10-01-06)

43.55.00 CONDUCT OF HEARINGS:
Any person or entity affected by the decision of the ~~Director of Building and Zoning~~Zoning Administrator may appear at the hearing in person or by a representative. That party may call witnesses and introduce evidence on the issue.

(Rev. 05-04-98)

43.60.00 DECISION OF THE BOARD:
The decision of the Board of Appeals is final.

43.60.01 A copy of the Board's decision shall be transmitted to the applicant or appellant, and to the ~~Director of Building and Zoning~~Zoning Administrator. The decision of the Board is binding upon the appellant and ~~Director of Building and Zoning~~Zoning Administrator. Any items or conditions of the Board's decision shall be incorporated into the permit.

(Rev. 05-04-98)

43.65.00 REVIEW BY CIRCUIT COURT
A person aggrieved by a decision of the Board of Zoning Appeals may appeal the decision to Circuit Court, as provided by law. An appeal to Circuit Court shall be filed within 30 days after the Board of Zoning Appeals certifies its decision in writing or approves the minutes of its decision.

(Enacted: 09-18-06; Effective: 10-01-06)

43.70.00 POWERS OF THE BOARD OF ZONING APPEALS:

The Board of Zoning Appeals shall have the following powers or duties:

43.70.01 To hear, and decide appeals from any decision of the ~~Director of Building and Zoning~~Zoning Administrator in the enforcement of this Chapter which falls within the jurisdiction of the Board of Zoning Appeals.

(Rev. 05-04-98)

43.90.00 RECONSIDERATION:

A decision of the Board cannot be reconsidered unless newly discovered evidence or substantially changed conditions are brought to the attention of the ~~Director of Building and Zoning~~Zoning Administrator.

(Rev. 05-04-98)

43.95.00 FEES:

Before accepting an appeal, the ~~Director of Building and Zoning~~Zoning Administrator shall collect for the City of Troy the appropriate fee.

(Rev. 05-04-98)

Section 4. Savings

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect, are hereby saved. Such proceedings may be consummated under and according to the ordinance in force at the time such proceedings were commenced. This ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this ordinance adopting this penal regulation, for offenses committed prior to the effective date of this ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this ordinance may be continued, for offenses committed prior to the effective date of this ordinance, under and in accordance with the provisions of any ordinance in force at the time of the commission of such offense.

Section 5. Severability Clause

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provision of this ordinance shall remain in full force and effect.

Section 6. Effective Date

This Ordinance shall become effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

This Ordinance is enacted by the Council of the City of Troy, Oakland County, Michigan, at a regular meeting of the City Council held at City Hall, 500 W. Big Beaver, Troy, MI, on the

_____ day of _____, 2009.

Louise E. Schilling, Mayor

Tonni L. Bartholomew, MMC
City Clerk

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The Special Meeting of the Troy City Planning Commission was called to order by Chair Schultz at 6:30 p.m. on December 15, 2009 in the Council Chambers of the Troy City Hall.

1. ROLL CALL

Present:

Donald Edmunds
Michael W. Hutson
Mark Maxwell
Philip Sanzica (arrived at 6:35 p.m.)
Robert M. Schultz
Thomas Strat
John J. Tagle
Lon M. Ullmann

Absent:

Mark J. Vleck

Also Present:

R. Brent Savidant, Acting Planning Director
Allan Motzny, Assistant City Attorney

2. APPROVAL OF AGENDA

Resolution # PC-2009-12-103

Moved by: Edmunds
Seconded by: Tagle

RESOLVED, To approve the Agenda as published.

Yes: All present (7)
Absent: Sanzica (arrived at 6:35 p.m.), Vleck

MOTION CARRIED

3. PUBLIC COMMENTS

There was no one present who wished to speak.

4. PUBLIC HEARING - ZONING ORDINANCE TEXT AMENDMENT (File Number ZOTA 241)
– Establishment of Zoning Administrator

Mr. Savidant presented the item. There was general discussion on the item.

Chair Schultz opened the Public Hearing.

There was no one present who wished to speak.

Chair Schultz closed the Public Hearing.

Resolution # PC-2009-12-104

Moved by: Maxwell

Seconded by: Strat

RESOLVED, That the Planning Commission hereby recommends to the City Council that Articles 22, 23, 28, 41, 42 and 43 of Chapter 39 of the Code of the City of Troy which establishes the position of Zoning Administrator and assigns the responsibilities of the Zoning Administrator, be amended as printed on the proposed Zoning Ordinance Text Amendment.

Yes: All present (8)

Absent: Vleck

MOTION CARRIED5. **PUBLIC COMMENT** – For Items Not on the Agenda

There was no one present who wished to speak.

ADJOURN

The Special/Study Meeting of the Planning Commission adjourned at 6:37 p.m.

Respectfully submitted,

Robert M. Schultz, Chair

R. Brent Savidant, Acting Planning Director

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From: [RC](#)
To: [Kathy Czarnecki](#)
Subject: Re: Zoning Administrator
Date: Wednesday, December 02, 2009 2:46:33 PM

Hello

Please do not establish a Zoning Administrator. With the City's bleak financial condition over the next five years, we do not need to spend the money on this position. Apparently we have never had this position in our City Government, so let's do without it for a few more years.

I would vote NO to amending the City Charter if I was able to vote on the matter.

Thanks

Ron Chick
1380 Leafgreen