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**Division I: Zoning Amendments; procedure.**

**Section 8.010. Who may apply**

1) Text Amendments. An application for a zoning text amendment may only be filed by the Governing Body, the City Administrator or the Director. A "zoning text amendment" is any amendment to the City's Zoning Code herein, but does not include the Property Rezoning.

2) Property Rezoning. An application for property rezoning may be filed by either the City Administrator, at the direction of the Governing Body, the landowner, or the landowner's agent. A "Property Rezoning" is a zoning district change or a planned use amendment applicable to one or more specific properties reflected on the Official Zoning Map.

**Section 8.020. Consideration of zoning text amendments**

All zoning text amendments shall be approved by ordinance. Consideration of zoning text amendments shall require a public hearing before the Commission following publication notice in accordance with requirements set forth in Division II of this Article. The recommendation of the Commission is advisory. A vote either for or against a zoning text amendment by a majority of all of the Commissioners present shall constitute a recommendation of the Commission. If a motion for or against the zoning text amendment fails to receive a majority vote, the Commission may entertain a new motion. A tie vote, or the failure to obtain a majority vote on any motion, shall constitute a "failure to recommend." The Commission's recommendation, or failure to recommend, shall be submitted to the Governing Body, accompanied by a written summary of the hearing. When the Commission submits a recommendation to the Governing Body, the Governing Body may take such action as it deems appropriate, including approval, approval with conditions, disapproval, amendment of the application and adoption as amended, or rehearing of the petition by the Governing Body.

**Section 8.030. Consideration of Property Rezoning applications**

1) Public hearing required: Consideration of all applications for Property Rezoning shall require a public hearing before the Commission and Governing Body, with publication notice, notice to surrounding property owners as required by Division II of this Article.

2) Procedures: The procedures for Commission and Governing Body consideration of Property Rezoning applications shall conform to the procedures set forth for zoning text amendments. The Governing Body shall not take action on the Commission's original recommendation or a failure to recommend unless seven (7) days have elapsed after the date of the conclusion of the Commission's public hearing held pursuant to publication notice to allow the filing of a protest petition as provided in this section. However, where the right to file a protest petition has been waived in a verified statement signed by all property owners holding the right, the Governing Body may consider the Commission's recommendation at any time.

3) Protest petitions: A protest against any Property Rezoning application shall be filed not later than the end of the business day (5:00 p.m.) on the seventh (7th) day following the date of the conclusion of the Commission's public hearing held pursuant to the publication notice. To be considered a valid protest, a protest petition must be timely filed and duly signed and

acknowledged by the owners of 20% of the frontage proposed to be altered, or by the owners of 20% of the frontage immediately adjoining or across an alley therefrom, or by the owners of 20% of the frontage directly opposite the frontage proposed to be altered.

If a protest is filed, a copy of the written protest shall be served by the protestor or protestors on the applicant for the proposed amendments and a copy upon the applicant's attorney, if any, by certified mail at the address of the applicant and attorney shown in the application for the proposed amendment. Verification of the genuineness and correctness of the signatures on the protest petition, either individually or collectively, shall be made by a person who has signed the protest petition.

Once a valid protest petition has been filed with the City, it may not be withdrawn unless every person who originally signed the protest signs a verified affidavit that states and fully explains the rights being waived by the withdrawal of the protest petition. The affidavits of withdrawal must be filed with the City Clerk on or before the last regular business day preceding the Governing Body meeting for which the protest applies. For purposes of withdrawal, signatures shall not be required of the City, where City-owned property lies within the protest area, or of entities controlling rights-of-way or utility easements.

4) Adoption where protest filed: Where a valid protest petition has been filed, an ordinance approving the Property Rezoning shall not become effective except by the favorable vote of two-thirds (2/3) of all members of the Governing Body.

5) Criteria for considering applications: In considering any application for rezoning, the Commission and the Governing Body may give consideration to the criteria stated below to the extent they are pertinent to the particular application. The Commission and Governing Body also may consider other factors that may be relevant to a particular application.

   a) the existing uses and zoning of nearby property;

   b) the extent to which property values are diminished by the particular zoning restrictions;

   c) the extent to which the destruction of property values of plaintiff promote the health, safety, morals or welfare of the public;

   d) the relative gain to the public as compared to the hardship imposed upon the individual property owner;

   e) the suitability of the subject property for the zoned purposes;

   f) the length of time the property has been vacant as zoned considered in the context of land development in the area in the vicinity of the subject property;

   g) the care that the community has taken to plan its land use development, and

   h) the community need for the proposed use.

**Section 8.040. Limitation on successive Property Rezoning applications by landowner**

1) No application for Property Rezoning shall be accepted if any application for Property Rezoning for substantially the same property has been filed and advertised for public hearing within the preceding twelve (12) months.

2) For purposes of paragraph 1 of this Section, the preceding twelve (12) months period shall be determined as follows:

a) If there was final action (either approval or denial) on the prior application, the twelve (12) months period shall run from the date of the action.

b) If the prior application was withdrawn after being advertised for public hearing, the twelve (12) months period shall run from the date the application was withdrawn.

3) The Director shall determine if an application concerns "substantially the same property" as a prior application. The landowner may appeal the Director's determination to the Governing Body.

## Division II: Notices and hearings

### Section 8.050. Publication notices

1) Newspaper public notice publication: Notice of all hearings for zoning text amendments, property rezoning, or other approvals subject to this requirement shall be published in one issue of a newspaper published in the City or, if no newspaper is published in the City, a newspaper of general circulation in the City. At least fifteen (15) days, but no more than thirty (30) days, shall elapse between the date of such publication and the date set for hearing. It shall be the City's responsibility to make sure said public notice is published pursuant to this section. Notice for text amendments shall include a brief statement describing the requested change. Notice for other amendments or approvals shall include:

   a) Identification or description of the particular location for which the amendment or other approval is sought, as well as

   b) A brief statement describing the proposed amendment or other approval sought.

### Section 8.060. Notices of hearing to surrounding property owners

1) Mailed notice: Notice for hearings subject to this Division II, except hearings for text amendments, shall in addition to the newspaper publication requirement above also require notice to surrounding property owners as follows:

   a) The applicant shall certify and provide the addresses and owners, as recorded in the office of the Recorder of Deeds of St. Clair County, Illinois and as appears from the authentic tax records of the County, of all property within 250 feet in each direction of the location for which the Special Use is requested.

   b) Making notice of the hearing to the neighboring owners of record is the City's responsibility and shall be sent by regular mail within 15 days of the scheduled hearing, but shall not be sent more than 30 days prior to the scheduled hearing.

2) Notice of intent to surrounding property owners: It shall be the applicant's responsibility to submit a notice of intent to surrounding property owners by certified mail. The notice shall contain the time and place of the public hearing and a statement regarding the purpose of the hearing, including, but not limited to, the following;

   a) The notice shall contain a statement regarding the proposed changes in the Chapter or in the boundaries of the zone or district.

   b) Where the hearing is for an application that relates to specific property, the property shall be designated by its legal description and general street location.

**Section 8.070. Public hearings**

When the consideration of an application requires a public hearing, the following shall apply:

1) Purpose: The purpose of a public hearing is to provide the applicant and all other interested parties a reasonable and fair opportunity to be heard, to present evidence relevant to the application and to rebut evidence presented by others.

2) Minutes: A journal of minutes of the proceedings shall be made for all public hearings.

3) Rules of procedure: All testimony by witnesses in any hearing shall be given under oath. The Governing Body, Commission and Board may adopt additional rules of procedure for public hearings by resolution or bylaws.

4) Continuance: Any applicant or authorized agent shall have the right to one continuance of a public hearing before the Commission, Governing Body or Board. No additional notices shall be required, except if a hearing is continued to an unspecified date, notice pursuant to Division to of this Article shall be required to officially schedule the subsequent date and place of the continued hearing. If a second continuance is required it shall be treated as a new public hearing. Notice for the new hearing shall be accordance with Section 4.060 "Publication Notices" and Section 14.070 "Notices to surrounding property owners".

## Division III: General applications and procedures

The following requirements apply to all applications for zoning Text Amendments, Property Rezonings, Special Use permits, and other applications subject to this Chapter, unless otherwise specified.

**Section 8.080. Applications**

1) All applications shall be made on forms provided by the City.

2) If an application is filed by, or on behalf of, a landowner, an affidavit of ownership shall be submitted to the City with the application.

3) If an application is filed by an agent of a landowner, an affidavit of the landowner establishing the agent's authorization to act on behalf of the landowner shall also be submitted with the application.

4) All applications shall be accompanied with the appropriate fees made payable to the City of O'Fallon, Ill.

5) The affidavits required by this Section shall be on forms provided by the City or in such form as is acceptable to the Director and shall be submitted at the time of filing the application.

6) All applications shall include proof of service to the St. Clair County Soil and Water Conservation District for comment pursuant to 70 ILCS 405/22.02a of a copy of any application for text amendment, property rezoning variance, or application for relief from existing zoning regulation shall be sent

**Section 8.090. Pre-application conference**

A pre-application conference with the Director or his designee shall be required prior to submission of any application for a variance, rezoning, special use permit, sketch plan, preliminary development plan, or preliminary plat. The purpose of this conference is to:

1) acquaint the applicant with the procedural requirements of this Chapter;
2) provide for an exchange of information regarding applicant's proposed development and the regulations, restrictions and requirements of this Chapter, the Comprehensive Plan and other development requirements;
3) advise the applicant of any technical studies or public sources of information that may aid the application;
4) identify policies and regulations that create opportunities or pose significant restraints for the proposed development;
5) review any proposed concept plans and consider opportunities to increase development benefits and mitigate undesirable project consequences;
6) review whether the application is compatible with adjacent proposed or existing development; and
7) permit assistance by City staff with the development's general design.

**Section 8.100. General application requirements**

1) Application requirements: Unless otherwise indicated in this Chapter or by the Director, all applications shall contain or be accompanied by the following items and materials;
    a) date prepared;
    b) name, address and telephone number of the applicant and the name, address and telephone number of the landowner if different than the applicant;
    c) affidavit of ownership pursuant to Section 8.080;
    d) Such information and certifications required by Section 8.060 (notice to surrounding owners);
    e) name, address and telephone number of all persons preparing any technical studies, maps, drawings and documents submitted with the application;
    f) form provided by Director, signed by both the landowner and the Director, that shows a pre-application conference has occurred as required herein;
    g) accurate legal description of the property for which the application is submitted;
    h) any technical studies that may be required by the Director;
    i) statement regarding adequate public facilities and services for the proposed development; and
    j) small key map with north arrow indicating the location of the property within the City.
        a. A statement of the reasons for the request
        b. A statement of when development of the land area covered by the application is contemplated to commence after the application is approved.

2) Map submission requirements: Unless otherwise indicated in this Chapter or by the Director, each map required by this Chapter shall be on paper that is 24" x 36". An 11X17 version of and/or a digital copy of all applications may also be required, as needed, by the Director. The maps in the number of copies as required by the Director shall contain the following:
    a) date prepared;
    b) name, address and telephone number of the person who prepared, or person responsible for preparing, the map;
    c) graphic, engineering scale;
    d) north arrow;
    e) location of property lines of the subject property;
    f) approximate existing and proposed grades based on USGS datum at ten-foot contour intervals or spot grades for preliminary submissions (including sketch plans), and five- or two-foot (5- or 2-foot) contour intervals for final submissions (including final development plans); and
    g) Existing conditions showing the following:
        i. All existing streets and rights-of-way on the land area covered by the application and on all property within 250 feet of the boundaries of the property, including street name and widths of pavement and rights-of-way.
        ii. Names of any abutting subdivisions, and the names of owners of abutting property on unsubdivided parcels.
        iii. Land use and zoning classification with district boundary lines of all property abutting and all property within 250 feet of the boundaries of the property covered by the application.
        iv. All existing drainage channels on the land area covered by the application.
        v. The location and size of all existing utilities and easements on the land area covered by the application.
        vi. The location and elevation of all areas designated as one hundred (100) year floodplain areas by the Federal Emergency Management Agency on the land area covered by the application.

**Section 8.110. Submission of technical studies**

1) Technical studies required by the Director: The Director may require applicants to submit any technical studies that the Director deems necessary to enable the appropriate person or entity to fully evaluate the application. Examples of technical studies that may be required shall include, but not be limited to, traffic studies, engineering studies, geologic or hydrogeologic studies, flood studies, environmental impact assessments, noise studies, or surface water management/drainage studies. The persons or firms preparing the studies shall be approved by the Director. The costs of all studies shall be borne by the applicant.

2) Technical studies required by Commission or Governing Body. Notwithstanding the fact that the Director did not require submission of a technical study in support of an application, either the Commission or the Governing Body may require the submission of a technical study prior to

taking action on an application. In this case, the persons or firms selected to perform the study shall be approved by the entity requesting that the study be performed. Any decision of the Commission or the Governing Body to require that a study be performed or to disapprove the person or firm selected by the applicant to perform the study shall be final. The persons or firms preparing the studies shall be approved by the Director. The costs of all studies shall be borne by the applicant.

### Section 8.120. When applications deemed complete

No application shall be deemed complete until all items required to be submitted by this Chapter have been submitted. Upon receipt of a complete application the Department shall note the filing date on the application and shall make a permanent record thereof. If the applicant fails to submit required elements, the application will not be considered complete, the application shall not be processed, and the filing, notification and advertising process established by this Chapter will not begin until all required elements have been submitted in the form required by this Chapter.

### Section 8.130. Application and submission deadlines

The Director or the Commission may administratively provide for submission deadlines for materials required in support of any application provided for in this Chapter. These deadlines shall be provided to the applicant at the pre-application conference. Compliance with these deadlines is required before the application will be placed on an agenda to be heard by the appropriate entity.

### Section 8.140. Dual applications

In an instance where an applicant seeks approval of two (2) requests simultaneously, such as a Property Rezoning and a special use permit, the applicant shall submit all necessary documents, plans, maps and other required information in accordance with the provisions relating to both of the submitted applications and pay all appropriate fees for both applications.

### Section 8.150. City staff review

The City staff shall review all applications, plans, information and data submitted in support of an application by the applicant. After reviewing such information, the City staff shall prepare a staff report discussing the submitted data. This report shall be provided to the applicant, all appropriate City officials and be available for public review. The staff report may contain a recommendation for approval, approval with conditions, or denial.

### Section 8.160. Conditional approvals

In the consideration of any application authorized by this Chapter, the recommending and the approving authority may stipulate that the recommendation or approval, as the case may be, is subject to compliance with certain specified conditions, including, but not limited to: limitations on permitted uses; time of performance requirements; limitation on hours of operation; and provision of services and/or facilities to ensure that adequate public services and facilities are available to serve the development proposed by the application.

### Section 8.170. Written findings not required; when.

Unless otherwise specifically provided in this Chapter or by other applicable law, written findings are not required for a final decision on any application. However, any decision may be expressly made

subject to the subsequent adoption of written findings and, if expressly made subject to written findings, the decision shall not be final until the findings are adopted.

**Section 8.180. Final decision where ordinance required**

In the case of a decision to approve an application where adoption of an ordinance is required, the decision shall be final on the date that the Governing Body adopts the ordinance approving the application.

A decision to deny an application is final when:

1) the Governing Body votes to deny the application; or

2) an ordinance with respect to such application fails to receive number of votes required by law.

**Section 8.190. Appeals of final decisions**

Except where this Chapter provides for an appeal to another body, any person, official or agency who is aggrieved by a final decision on an application provided for in this Chapter, and who desires to appeal the decision, shall file the appeal in the appropriate court of jurisdiction, as the case may be, within thirty (30) days after the decision is made.