



CITY COUNCIL

MEETING AGENDA

December 19, 2019

Marc D. Tall, Mayor
Peggy O'Connell, Mayor Pro Tem
Ralph B. Blasier, Council Member
Tyler D. DuBord, Council Member
Karen S. Moore, Council Member

Patrick S. Jordan, City Manager
Phil DeMay, City Clerk
John Bergman, City Attorney

[City Council Chambers located at: City Hall – 410 Ludington Street – Room C101 – Escanaba MI 49829](#)

The Council has adopted a policy to use a Consent Agenda, when appropriate. All items with an asterisk (*) are considered routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member or citizen so requests, in which event, the item will be removed from the General Order of Business and considered in its normal sequence on the Agenda.

[Regular Meeting](#)

Thursday, December 19, 2019, at 7:00 p.m.

CALL TO ORDER

ROLL CALL

INVOCATION/PLEDGE OF ALLEGIANCE

APPROVAL/CORRECTION(S) TO MINUTES – Regular Meeting – December 5, 2019

APPROVAL/ADJUSTMENTS TO THE AGENDA

CONFLICT OF INTEREST DECLARATION(S)

BRIEF PUBLIC COMMENT(S)

PUBLIC HEARINGS

1. Second Reading, Public Hearing and Adoption of Ordinance No. 1218, An Ordinance Amending Ordinance No. 1028, by Revising Selected Sections of Chapter 1 – General Provisions.

Explanation: Administration is requesting the City Council to consider approval and adoption of Ordinance No. 1218, An Ordinance to Amend Chapter I of Appendix A as Codified Under the Code of Ordinances.

2. Second Reading, Public Hearing and Adoption of Ordinance No. 1219, An Ordinance Amending Ordinance No. 1028, by Amending Selected Sections of Chapter 2 – Administration, Enforcement and Penalty.

Explanation: Administration is requesting the City Council to consider approval and adoption of Ordinance No. 1219, An Ordinance to Amend Chapter II of Appendix A as Codified Under the Code of Ordinances.

3. Second Reading, Public Hearing and Adoption of Ordinance No. 1220, An Ordinance Amending Ordinance No. 1028, by Amending Selected Sections of Chapter 3 – Board of Zoning Appeals.

Explanation: Administration is requesting the City Council to consider approval and adoption of Ordinance No. 1220, An Ordinance to Amend Chapter III of Appendix A as Codified Under the Code of Ordinances.

4. Second Reading, Public Hearing and Adoption of Ordinance No. 1221, An Ordinance Amending Ordinance No. 1028, by Amending Section 401 – District Classifications of Chapter 4 – District, Boundaries and Zoning Map.

Explanation: Administration is requesting the City Council to consider approval and adoption of Ordinance No. 1221, An Ordinance to Amend Chapter IV of Appendix A as Codified Under the Code of Ordinances.

5. Second Reading, Public Hearing and Adoption of Ordinance No. 1222, An Ordinance Amending Ordinance No. 1075, by Amending Section 2112 – Fences and Walls of Chapter 21 – Central Retail Commercial District.

Explanation: Administration is requesting the City Council to consider approval and adoption of Ordinance No. 1222, An Ordinance to Amend Chapter XXI of Appendix A as Codified Under the Code of Ordinances.

UNFINISHED BUSINESS

NEW BUSINESS

1. Presentation – Rehmann Will Provide a Presentation of the Audit Results.

Explanation: A representative from audit firm Rehmann will provide a presentation of the June 30th, 2019 audit results.

Agenda –December 19, 2019

APPOINTMENTS
BOARD, COMMISSION, AND COMMITTEE REPORTS
GENERAL PUBLIC COMMENT
ANNOUNCEMENTS
ADJOURNMENT

Respectfully Submitted,

A handwritten signature in blue ink that reads "Patrick S. Jordan". The signature is written in a cursive style with a large initial "P".

**Patrick S. Jordan
City Manager**

**OFFICIAL PROCEEDINGS
CITY COUNCIL
CITY OF ESCANABA, MICHIGAN
Regular Council Meeting
Thursday, December 5, 2019**

The meeting was called to order by the Honorable Mayor Marc D. Tall at 7:00 p.m. in the Council Chambers of City Hall located at 410 Ludington Street.

Present: Mayor Marc D. Tall, Council Members, Ralph B. Blasier, Tyler D. DuBord, and Karen S. Moore.

Absent: Mayor Pro Tem O'Connell

Also Present: City Manager Patrick S. Jordan, City Clerk Phil DeMay, Department Heads, media, and members of the public.

Pastor Jason Janich of New Life Assembly of God Church gave the Invocation and City Clerk DeMay led Council in the Pledge of Allegiance.

Blasier moved, DuBord seconded, **CARRIED UNANIMOUSLY**, to excuse Mayor Pro Tem O'Connell.

Blasier moved, DuBord seconded, **CARRIED UNANIMOUSLY**, to approve Regular Meeting minutes from November 21, 2019, as submitted.

ADJUSTMENTS TO THE AGENDA

Moore moved, DuBord seconded, **CARRIED UNANIMOUSLY**, to approve the City Council Agenda as submitted.

CONFLICT OF INTEREST DECLARATION – None

BRIEF PUBLIC COMMENT – None

PUBLIC HEARINGS

PH-1 Second Reading, Public Hearing and Adoption of Ordinance No. 1217, An Ordinance Amending Ordinance No. 1028, by Adding Chapter 22 to Provide Provisions for the Regulation for Safe, Effective and Efficient Use of Wind Energy Systems.

Administration requested the City Council to consider approval and adoption of Ordinance No. 1217, An Ordinance Amending Ordinance No. 1028, by Adding Chapter 22 to Provide Provisions for the Regulation for Safe, Effective and Efficient Use of Wind Energy Systems.

This being a public hearing, Mayor Tall asked if there was any public comment.

Hearing no public comment, Mayor Tall closed the public hearing and the following resolution was made:

PH-1 “By Council Member Blasier, seconded by Council Member Moore;

Resolved, That Ordinance No. 1217, An Ordinance Amending Ordinance No. 1028, by Adding Chapter 22 to Provide Provisions for the Regulation for Safe, Effective and Efficient Use of Wind Energy Systems, given its public hearing at this meeting, be and is hereby adopted and that it be published in accordance with the requirements of the City Charter.”

Herewith Ordinance No. 1217 adopted by title:

“AN ORDINANCE AMENDING ORDINANCE NO. 1028, BY ADDING CHAPTER 22 TO PROVIDE PROVISIONS FOR THE REGULATION FOR SAFE, EFFECTIVE AND EFFICIENT USE OF WIND ENERGY SYSTEMS.”

Full text in Ordinance Record “K”.

Upon a call of the roll, the vote was as follows:

Ayes: Blasier, Moore, DuBord, Mayor Tall
Nays: None

RESOLUTION DECLARED ADOPTED.”

UNFINISHED BUSINESS

UB-1 Approval – MERS Participation Agreement Amendment – Controller.

Administration sought Council approval of an amendment to the MERS 457 Participation Agreement. The City Manager’s new contract provided for a 10% contribution into a 457 deferred compensation account paid by the City. The MERS 457 plan needed to be amended to allow for the employer contributions.

UB-1 Blasier moved, Moore seconded, to approve of an amendment to the MERS 457 Participation Agreement.

Upon a call of the roll, the vote was as follows:

Ayes: Blasier, Moore, DuBord, Mayor Tall
Nays: None

MOTION CARRIED.

NEW BUSINESS

NB-1 Approval - 2020 City Council Meeting Dates.

Administration sought Council approval of the 2020 regular Annual Council Meeting schedule.

NB-1 Moore moved, DuBord seconded, **CARRIED UNANIMOUSLY**, to approve of the 2020 regular Annual Council Meeting schedule.

NB-2 Approval – Employee Assistance Program (EAP) – HR Director/Treasurer.

Administration sought Council approval to enter into a one year contract agreement for professional EAP services through Hallfrisch Counseling & EAP Services, PLLC, not to exceed \$6,080. Administration would also like to discuss the options of yearly renewal, if approved.

NB-2 DuBord moved, Blasier seconded, to approve to enter into a one year contract agreement for professional EAP services through Hallfrisch Counseling & EAP Services, PLLC, not to exceed \$6,080.

Upon a call of the roll, the vote was as follows:

Ayes: DuBord, Blasier, Moore, Mayor Tall
Nays: None

MOTION CARRIED.

NB-3 Approval – Professional Photographer and Aerial Photos for New City Website.

Administration sought Council approval to obtain ReCompose Media from Escanaba, Michigan, for Professional Photography and Aerial Photos in the amount of \$2,200.

NB-3 Blasier moved, DuBord seconded, to approve to obtain ReCompose Media from Escanaba, Michigan, for Professional Photography and Aerial Photos in the amount of \$2,200.

Upon a call of the roll, the vote was as follows:

Ayes: Blasier, DuBord, Moore, Mayor Tall
Nays: None

MOTION CARRIED.

NB-4 Approval – Resolution – Abolish Brownfield Plan for UP Enterprises at 2600 Ludington Street (420-2825-400-003).

Administration requested City Council to consider passing a resolution to abolish this particular brownfield plan as permitted by PA 381.

NB-4 “By Council Member Blasier, seconded by Council Member DuBord;

RESOLUTION 19-21

Whereas, on July 19, 2007, in accordance with Public Act 381 of 1996, the Brownfield Redevelopment Financing Act, as amended, the City council adopted a brownfield plan for UP Enterprises, at 2600 Ludington Street.

Whereas, the project is now complete, and the purposes of the brownfield plan have been accomplished.

Now, therefore, be it resolved, that the following brownfield plan is hereby abolished: a brownfield plan for UP Enterprises LLC at 2600 Ludington Street.

All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution shall be and the same hereby rescinded.

Upon a call of the roll, the vote was as follows:

Ayes: Blasier, DuBord, Moore, Mayor Tall

Nays: None

Absent: O’Connell

RESOLUTION DECLARED ADOPTED.”

NB-5 First Reading of Ordinance No. 1218, An Ordinance Amending Ordinance No. 1028, by Revising Selected Sections of Chapter 1 - General Provisions and Setting the Date of Thursday, December 19, 2019, for Second Reading, Public Hearing, and Adoption.

Administration requested the City Council to consider this the first reading of Ordinance No. 1218, An Ordinance Amending Ordinance No. 1028, by revising selected sections of Chapter 1 - General Provisions. Additionally, Administration requested that the City Council set December 19, 2019, for the second reading, public hearing and adoption of Ordinance No. 1218.

NB-6 First Reading of Ordinance No. 1219, An Ordinance Amending Ordinance No. 1028, by Amending Selected Sections of Chapter 2 – Administration, Enforcement, and Penalty and Setting the Date of Thursday, December 19, 2019, for Second Reading, Public Hearing, and Adoption.

Administration requested the City Council to consider this the first reading of Ordinance No. 1219, An Ordinance Amending Ordinance No. 1028, by revising selected sections of Chapter 2 - Administration, Enforcement, and Penalty. Additionally, Administration requested that the City Council set December 19, 2019, for the second reading, public hearing and adoption of Ordinance No. 1219.

NB-7 First Reading of Ordinance No. 1220, An Ordinance Amending Ordinance No. 1028, by Amending Selected Sections of Chapter 3 – Board of Zoning Appeals and Setting the Date of Thursday, December 19, 2019, for Second Reading, Public Hearing, and Adoption.

Administration requested the City Council to consider this the first reading of Ordinance No. 1220, An Ordinance Amending Ordinance No. 1028, by revising selected sections of Chapter 3 – Board of Zoning Appeals. Additionally, Administration requested that the City Council set December 19, 2019, for the second reading, public hearing and adoption of Ordinance No. 1220.

NB-8 First Reading of Ordinance No. 1221, An Ordinance Amending Ordinance No. 1028, by Amending Section 401 –District Classifications of Chapter 4 – District, Boundaries, and Zoning Map and Setting the Date of Thursday, December 19, 2021, for Second Reading, Public Hearing, and Adoption.

Administration requested the City Council to consider this the first reading of Ordinance No. 1221, An Ordinance Amending Ordinance No. 1028, by revising section 401 of Chapter 4 – District, Boundaries, and Zoning Map. Additionally, Administration requested that the City Council set December 19, 2019, for the second reading, public hearing and adoption of Ordinance No. 1221.

NB-5 thru NB-8 Blasier moved, DuBord seconded, to consider this the first reading of Ordinance No. 1218, 1219, 1220, and 1221, and to set December 19, 2019, for the second reading, public hearing and adoption of Ordinance No. 1218, 1219, 1220, and 1221.

Upon a call of the roll, the vote was as follows:

Ayes: Blasier, DuBord, Moore, Mayor Tall
Nays: None

MOTION CARRIED.

NB-9 First Reading of Ordinance No. 1222, An Ordinance Amending Ordinance No. 1075, by Amending Section 2112 –Fences and Walls of Chapter 21 – Central Retail Commercial District and Setting the Date of Thursday, December 19, 2022, for Second Reading, Public Hearing, and Adoption.

Administration requested the City Council to consider this the first reading of Ordinance No. 1222, An Ordinance Amending Ordinance No. 1075, by revising section 2112 of Chapter 21- Central Retail Commercial District. Additionally, Administration requested that the City Council set December 19, 2019, for the second reading, public hearing and adoption of Ordinance No. 1222.

NB-9 DuBord moved, Moore seconded, to consider this the first reading of Ordinance No. 1222, An Ordinance Amending Ordinance No. 1075, by revising section 2112 of Chapter 21- Central Retail Commercial District and to set December 19, 2019, for the second reading, public hearing and adoption of Ordinance No. 1222.

Upon a call of the roll, the vote was as follows:

Ayes: DuBord, Moore, Blasier, Mayor Tall

Nays: None

MOTION CARRIED.

NB-10 Approval – Resolution Requesting State Assistance for High Lake Levels.

Administration sought Council approval of a Resolution requesting State Assistance for High Lake Levels. Municipalities around the state are passing and sending this Resolution to their legislators in hopes of recognition by the State and Feds as to the costs to local municipalities for high lake levels and the ongoing damage.

NB-10 “By Council Member DuBord, seconded by Council Member Blasier;

RESOLUTION # 19 – 22

**Declaration of Shoreline Disaster Request
City of Escanaba, Delta County Michigan**

WHEREAS, record high water levels in the Great Lakes as well as the bay and rivers connected to them, have contributed toward major erosion on beaches and shorelines all across the State of Michigan during high water levels and currently throughout 2019, and

WHEREAS, it is anticipated that the Michigan winter with ice flows and jams will continue to worsen the already bad situation throughout the Great Lakes, and

WHEREAS, the Great Lakes are Michigan's most vital and precious resource, and

WHEREAS, the City of Escanaba recognizes the effects of storms, high water, and wind driven wave action that are causing severe erosion of the shoreline as well as related infrastructure damage, and

WHEREAS, the public trust doctrine states that the sovereign holds in trust, for the public use, the resources such as the shoreline regardless of private property ownership, and

WHEREAS, the 3,288 miles of shoreline in the State of Michigan must be protected as referred to in the Public Trust Doctrine, and

WHEREAS, the Great Lakes are the State of Michigan's economic and property value driver for the tax base along the shoreline and connecting tributaries, and

WHEREAS, the conditions of the Great Lakes shoreline affect businesses and the tourism industry by limited access to the beaches, the loss of property along the shoreline directly affects the local, county and state tax base; and the effects on municipal water systems and the inland water levels throughout the state are all affected.

NOW, THEREFORE, BE IT RESOLVED, the City of Escanaba requests that the Governor of the State of Michigan along with the State Legislature give favorable consideration to the declaration of the shoreline in the State of Michigan as a disaster area, and seek assistance from Congress and the President of the United States for this devastating situation which has an impact statewide.

BE IT FURTHER RESOLVED, that nothing from this resolution shall require any action by the City of Escanaba, the Escanaba Department of Public Works, the Escanaba Public Safety Department, the Escanaba Municipal Marina or any other City entity.

Upon a call of the roll, the vote was as follows:

Ayes: DuBord, Blasier, Moore, Mayor Tall

Nays: None

Absent: O'Connell

RESOLUTION DECLARED ADOPTED."

APPOINTMENT(S) TO CITY BOARDS, COMMISSIONS, AND COMMITTEES

Mayor Tall, with Council consensus, made the following appointment:

Peggy O’Connell to the Housing Commission, term expiring June 1, 2022.

BOARD, COMMISSION, AND COMMITTEE REPORTS

Council Members reviewed City Board and Commission meetings each attended since the last City Council Meeting.

GENERAL PUBLIC COMMENT

William Gasman – congratulated the newly elected City Council Members’ Moore and DuBord. Gasman discussed the need to educate residents on the use and sale of recreational marihuana.

ANNOUNCEMENTS

- December 10, 2019, Homemade Food Gifts for the Holidays at the Escanaba Public Library;
- December 21, 2019, at the Escanaba Public Library Saturday Story Hour with Santa at 1:30pm-2:30pm;
- December 6, 2019, Christmas Parade on Ludington Street in downtown Escanaba at 7:00 pm;
- Animal Shelter Open House 12:00 - 4:00 pm on December 7, 2019.

Hearing no further public comment, DuBord moved the Council adjourned at 7:27 p.m.

Respectfully submitted

Phil DeMay
City Clerk

Approved: _____
Marc D. Tall, Mayor

Agenda Item: PH-1
Date: 12-19-19

City Council Agenda Item Request

Date: 12/09/2019

Name: Roxanne Spencer

Department: Planning & Zoning

Item: Amendment to Zoning Ordinance, Ch. 1 - General Provisions

Meeting date requested: 12/19/2019

Explanation for request:

Administration is requesting the City Council to consider approval and adoption of Ordinance No. 1218, An Ordinance to Amend Chapter I of Appendix A as Codified Under the Code of Ordinances, An Ordinance Amending Ordinance No. 1028, by Revising Selected Sections of "Chapter 1 - General Provisions.

ORDINANCE NO. 1218

**AN ORDINANCE TO AMEND CHAPTER I OF APPENDIX A AS CODIFIED UNDER
THE CODE OF ORDINANCES**

THE CITY OF ESCANABA HEREBY ORDAINS:

CHAPTER I

Chapter I of Appendix A as codified under the Code of Ordinances shall be amended to read as follows:

CHAPTER 1. - GENERAL PROVISIONS

Section 101. - General.

101.1. *Title.* This Ordinance shall be known and may be cited as the "Zoning Ordinance" or the "Zoning Code".

101.2. *Purpose.* In interpreting and applying the provisions of this Ordinance, said provisions shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare of the community for the orderly development of the community in accordance with the goals and objectives as identified in the Master Plan. Among other purposes, such provisions are intended to provide for adequate light, air, and conveniences of access, to secure safety from fire and other dangers, and to avoid undue concentration of population by regulating and limiting the height and bulk of buildings, wherever erected, limiting and determining the size of yards, courts and other open spaces, regulating the density of population, and regulating and restricting the location of uses, trades, industries and buildings in relation to traffic and parking needs. Where this Ordinance imposes a greater restriction upon the use of buildings or premises or upon height of buildings or requires larger yards, courts, or other open spaces than are imposed or required by such existing provisions of law or Ordinance or by such rules, regulations, or permits or by such easements, covenants or agreements, the provisions of this Ordinance shall control.

101.3. *Scope.* Except as hereinafter provided, no building, structure, or premises or part thereof shall be used, altered, constructed, or reconstructed except in conformity with the provisions of this Ordinance which apply to the district in which it is located. However, any lawful nonconforming use existing at the time of passage of this Ordinance may be continued in accordance with the provisions of this Ordinance.

101.4. *Cross References, as amended.*

- A. Zoning and planning in home rule cities; MCL 117.4i.
- B. MI Planning Enabling Act; MCL 125.3801 et. seq.
- C. MI Zoning Enabling Act; MCL 125.3101 et. Seq.

101.5. *Interpretation; Conflict of Laws.* This Zoning Code is the minimum requirement for promoting the public health, safety and general welfare. If it imposes more restrictions than State law or other City Ordinances, the provisions of this Zoning Code shall govern. If the State Housing Law (MCL 125.401 et seq.) or the Airport Zoning Act (MCL 259.431) or other statutes or Ordinances have stricter regulations, the provisions of the statute or other Ordinance shall govern. Section titles or headings and any entire Section entitled "Purpose" shall be interpretive aids only and shall not be construed to impose any substantive or procedural requirement. Nothing in this Ordinance shall be interpreted as authorization for or approval of the continuance of the use of a structure or premises in violation of zoning provisions in effect at the time of the effective date of this Ordinance or any amendments thereto.

101.6. *Essential Services.* Essential services shall be permitted as authorized and regulated by law and other Ordinances, it being the intention hereof to exempt such essential services from the application of this Ordinance.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 102. - Planning Commission/Zoning Commission.

102.1. *General.* This section addresses the duties and responsibilities of a Planning Commission, hereafter referred to as "the commission" and other officials and agencies, with respect to the administration of this Code.

102.2. *Establishment; Zoning Commission.* The Planning Commission shall have all powers granted by law to be the Zoning Commission of the municipality.

102.3. *Master Plan.* It shall be the duty of the commission, after holding public hearings, to create and recommend to the City Council a Master Plan for the physical development of the jurisdiction, which shall be permitted to include areas outside its boundaries that bear consideration to the planning of the jurisdiction. The commission shall be permitted also to recommend amendments to the Master Plan regarding the administration or maintenance of the Zoning Ordinance. The Master Plan shall include at least the following elements:

- A. Official maps.
- B. Growth and land use.
- C. Commercial/industrial use.
- D. Transportation and utilities.
- E. Community facilities.
- F. Housing.
- G. Environmental.
- H. Geologic/natural hazards.
- I. Recreational uses.

102.4. *Zoning Code.* It shall be the duty of the Planning Commission to develop and recommend to the City Council a Zoning Code, in accordance with the guidelines of the Master Plan, establishing zones within the jurisdiction. Such a code shall be made in regards to the character of each district and the most appropriate use of land within the jurisdiction. The Planning Commission shall make periodic reports and recommendations to the City Council.

102.5. *Special Land Use Permit.* It shall be the duty of the commission to review all special land use permit applications. The application shall be accompanied by maps, drawings or other documentation in support of the request. The granting of a special land use permit shall not exempt the applicant from compliance with other relevant provisions of related ordinances.

102.6. *Appeals and Hearings.* Any person withstanding aggrieved by any decision of the commission shall have a right to make an appeal to the Zoning Board of Appeals as provided by this Code or State law. Such appeals shall be based on the record.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 103. - Changes and Amendments.

103.1. *General.* This section addresses the procedure for changing and amending the Zoning Ordinance.

103.2. *Procedure.* The Council may, from time to time, on its motion or on petition, amend, supplement, or change the district boundaries or regulations herein established in the manner prescribed by Act No. 110 of the Public Acts of Michigan for 2006 (MCL 125.3101 et seq.). Whenever the owners of fifty (50) percent or more of the frontage in any district or part thereof shall present to the Council a petition in writing, duly signed, and which shall have been acknowledged by each of said petitioners substantially in accordance with the provisions for the acknowledgment of deeds, requesting an amendment, supplement, change, or repeal of the provisions prescribed for such district or part thereof, it shall be the duty of the Council to vote upon said petition within ninety (90) days after the filing of the same by the petitioners with the Council. If any area is hereafter transferred to another district by a change in district boundaries by an amendment as above provided, the provisions of this Ordinance, relating to building or uses of buildings or premises existing at the time of passage of this Ordinance shall apply to buildings or

uses of buildings or premises existing at the time of passage of such amendment in such transferred area.

103.3. *Public Hearing.* A hearing before the Planning Commission shall be conducted on all proposed amendments, supplements, changes, or repeals of the provisions of this Code before referring the matter to the City Council for action. The procedure for the Planning Commission public hearing shall be as follows:

103.3.1. *Newspaper Notice.* At least fifteen (15) days' notice of the public hearing shall be given in an official newspaper of general circulation in the City.

103.3.2. *Public Notice.* At least fifteen (15) days' notice of the time and place of the public hearing shall be mailed to each public entity, public utility company and to each railroad company owning or operating any public utility or railroad within the districts affected that registers its name and mailing address with the City Clerk for the purpose of receiving the notice. An affidavit of mailing shall be maintained.

103.3.3. *Notice Applicability.* For properties which are proposed for rezoning, notice of the proposed rezoning and hearing shall be given at least fifteen (15) days before the hearing to:

- A. The owners of the property in question;
- B. All persons to whom real property is assessed within three hundred (300) feet of the boundary of the property in question; and
- C. At least one (1) occupant of each dwelling unit or spatial area owned or leased by different persons within three hundred (300) feet of the boundary of the property in question. Where a single structure contains more than four (4) dwelling units or distinct spatial areas, notice may be given to the manager or owner of the structure with a request to post the notice at the primary entrance to the structure. Where the names of the occupant is not known, the term "occupant" may be used in making notification.

103.4. *Notice.* The notice shall contain the following:

- A. A description of the proposed zoning;
- B. A description of the subject property;
- C. The time and location of the public hearing; and
- D. When and where written comments will be received.

103.5. *Protest.* If a protest of the proposed amendment is presented to the City Council at or before final action on the amendment and it is properly signed by the owners of at least twenty (20) percent of the area of land included in the proposed change, excluding publicly owned land, or by the owners of at least twenty (20) percent of the area of and included within an area extending out at least one hundred (100) feet from any point on the boundary of land included in the proposed change, excluding publicly owned land, then such amendment shall be passed only upon four (4) affirmative votes of the City Council.

103.6. *Publication.* Following the adoption of a Zoning Ordinance or amendment by the City Council, a notice of adoption shall be published in a newspaper of general circulation in the City within fifteen (15) days after adoption. The notice shall include the following information:

103.6.1. *New Adopted Ordinance.* In the case of a newly adopted Zoning Ordinance, the following statement: "A Zoning Ordinance regulating the development and use of land has been adopted by the City Council of the City of Escanaba."

103.6.2. *Zoning Ordinance Amendment.* In the case of an amendment to an existing Ordinance, either a summary of the regulatory effect of the amendment, including the geographic area affected, or the text of the amendment.

103.6.3. *Effective Date.* The effective date of the Ordinance.

103.6.4. *Purchase/Inspection of Ordinance.* The place and time where a copy of the Ordinance may be purchased or inspected.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 104. - Review of Zoning Code.

104.1. *General.* The Planning Commission shall routinely review the requirements of this Ordinance every five (5) years to ensure it is current and accurate.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 105. - Application of Code; Compliance Required.

105.1. *General.* The provisions of this Code shall apply to the following standards except as otherwise allowed by this Code:

- A. No building or structure shall be built, rebuilt, converted, enlarged, moved, or structurally altered, and no building or land shall be used, except for a use allowed in that district.
- B. No building or structure shall be built, rebuilt, converted, enlarged, or structurally altered except in conformity with the height, setback, bulk and other dimensional limits for that district.
- C. No land shall be cleared, no building or structure shall be built or rebuilt, converted, enlarged or structurally altered, and no parking area built or enlarged except after applying for and receiving a land use permit.
- D. No building shall be built or increased in area except in conformity with the off-street parking and loading regulations of the district in which such building is located unless it receives a special land use permit or planned unit development permit or parking waiver that changes these regulations.
- E. The minimum setbacks, parking spaces and other open spaces, including lot area per dwelling, required by this Zoning Code for any building hereafter built or structurally altered, shall not be encroached upon or considered as parking, setback, open space or lot area requirement for any other building, nor shall any lot area be reduced beyond the district requirements of this Zoning Code.
- F. No setback or lot shall be reduced in dimensions or area below the minimum requirements set forth herein except as a result of governmental action. Lots created after the effective date of this Zoning Code shall meet at least the minimum requirements of this Code.
- G. No lot, once established or improved with a building or structure, shall be divided unless each lot resulting from the division conforms with all of the requirements of this Code.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 106. - Repeal of Prior Ordinance.

106.1. *General.* The Zoning Ordinance adopted by the City of Escanaba, known as Ordinance No. 974, and all amendments thereto are hereby repealed. The repeal of the above Ordinance and its amendments does not affect or impair any act done, offense committed or writ occurring, occurred, or acquired, or liability, penalty, forfeiture, or punishment incurred prior to the time enforced, prosecuted, or inflicted.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 107. - Vested Right.

107.1. *General.* Nothing in this Ordinance should be interpreted or construed to give rise to any permanent vested rights in the continuation of any particular use, district, zoning classification or any permissible activities therein, and, they are hereby declared to be subject to subsequent amendment, change or modification as may be necessary to the preservation or protection of public health, safety, and welfare.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 108. - Severability.

108.1. *General.* If any provision of this Zoning Code is declared invalid by a court, such decision shall not affect the validity of this Zoning Code or any part other than the part declared to be invalid.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 109. - Construction of Language.

109.1. *General.* The following rules of construction apply to the text of this Ordinance:

- A. The particular shall control the general.
- B. In case of any difference of meaning or implication between the text of this Ordinance and any caption or illustration, the text shall control.
- C. The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
- D. Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
- E. A "building" or "structure": includes any part thereof.
- F. The phrase "used for" includes "arranged for", "designed for", "intended for", "maintained for", or "occupied for".
- G. The word "person" includes an individual, a corporation, a partnership, and incorporated association, or any other entity.
- H. Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and", "or", "either ...or", the conjunction shall be interpreted as follows:
 1. "And" indicates that all the connected items, conditions, provisions, or events shall apply.
 2. "Or" indicates that the connected items, conditions, provisions, or events may apply singly or in any combination.
 3. "Either...or" indicates that the connected items, conditions, provisions or events shall apply singly, but not in combination.
 4. Terms not herein defined shall have the meaning customarily assigned to them.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 110. - Definitions—General Requirements.

110.1. *Scope.* Unless otherwise expressly stated, the following words and terms shall, for the purposes of this Code, have the meanings shown in this section.

110.2. *Interchangeability.* Words stated in the present tense include the future; words in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.

110.3. *Terms defined in other codes.* Where terms are not defined in this code and are defined in the Michigan Building Code or the Michigan Rehabilitation Code for Existing Buildings, such terms shall have the meanings ascribed to them as in those codes.

110.4. *Terms not defined.* Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 111. - General Definitions.

Abutting means a lot or parcel which shares a common border with the subject lot or parcel.

Accessory building is a subordinate building or structure on the same lot with a main building, or a portion of the main building, occupied or devoted exclusively to an accessory use, such as a storage building. When an accessory building is attached to a main building in a substantial manner by a wall or roof, such as a storage building, such accessory building shall be considered part of the main building.

Accessory use means a use customarily incidental and subordinate to the principal use of the land or building and located on the same lot as the principal use.

Aggrieved person means a person who has suffered a substantial damage from a zoning decision not in common to other property owners similarly situated, and who has actively opposed the decision in question.

Airport terminal means the main passenger location of an airport and includes all office, hotel, and retail uses commonly occurring at such locations.

Alley means a way which functions primarily as a service corridor no less than fifteen (15) feet in width and provides access to properties abutting thereon. "Alley" does not mean "street".

Alteration means any change, addition or modification in construction or type of occupancy; any change in the structural members of a building, such as walls or partitions, columns, beams or girders.

Assembly Group means the use of a building or structure, or portion thereof, for the gathering together of persons for purposes such as civic, social, or recreation functions.

Basement means that portion of a building which is partly or wholly below finished grade, but so located that the vertical distance from the average grade to the floor is greater than the vertical distance from the average grade to the ceiling. A basement, as defined herein, shall not be counted as a story. A cellar is a basement.

Bed and breakfast uses. A bed and breakfast operation is a use which is subordinate to the dwelling unit and the use in which transient guests are provided sleeping rooms and breakfast only, in return for payment.

Berm means a constructed mound of earth rising to an elevation above the adjacent ground level of the site where located which contributes to the visual screening of the area behind the berm.

Block means a unit of land bounded by streets or by a combination of streets and public land, railroad rights-of-way, waterways or any other barrier to the continuity of development.

Block, face. "Face block" means that portion of a block or tract of land facing the same side of a single street and lying between the closest intersecting streets.

Boat house means an enclosed or partially enclosed structure designed for the use and storage of private watercraft and marine equipment.

Boat livery means any structure, site or tract of land utilized for the storage, servicing, docking or rental of watercraft for a fee.

Brew pub means a facility as defined by the State of Michigan.

Building means any structure designed or built for the enclosure, shelter or protection of persons, animals, chattels or property of any kind.

Building front is the front of the building that the facade most nearly parallel to and nearest to the front lot line.

Building, height of. See "Height of building".

Building principal. "Principal building" means a building within which is conducted the main or principal use of the lot upon which it is located.

Campers/van. See "trailer".

Cemetery means property, including crematories, mausoleums, and/or columbariums, used or intended to be used solely for the perpetual interment of deceased human being or household pets.

City Plan means the official statement of policy by the Planning Commission pursuant to MI Planning Enabling Act (MCL 125.3801 et seq), for a desirable physical pattern for future community development.

Clinic means an establishment where human patients who are not lodged overnight are admitted for examination and treatment by a group of physicians or dentists or similar professions.

Club means an organization of persons for special purposes or for the promulgation of sports, arts, science, literature, politics, agriculture or similar activities, but not operated for profit and open to members and not to the public.

Cluster means a development design technique that concentrates building on a portion of the site to allow the remaining land to be used for recreation, common open space and preservation of environmentally sensitive features.

Code Official means the head of the City Community Preservation or the designee of that person.

Communication tower means a radio, telephone or television relay structure of a monopole or skeleton framework, attached directly to the ground or to another structure, used for the transmission or reception of radio, television, microwave, or any other form of telecommunications signals. Communication tower does not include an air traffic control tower or a satellite dish one (1) square meter or less in a Residential District or two (2) square meters or less in a Nonresidential District.

Community building. A building or group of buildings for a community's educational and recreational activities.

Convenience store means a retail establishment offering for sale prepackaged food products, household items and other goods commonly associated with the same and having a gross-floor area of less than five thousand (5,000) square feet.

Country club. See "golf course".

Court. A court is an open unoccupied space, other than a yard, and bounded on at least two (2) sides by a building. A court not extending to the street or front yard or rear yard is an outer court.

Critical root zone means a circular area surrounding a tree, the radius of which is measured outward from the trunk of a tree one (1) foot for each one (1) inch of diameter at breast height. The critical root zone shall also extend to a depth of four (4) feet below the natural surface ground level.

Cul-de-sac shall mean a minor street with only one (1) outlet and culminated by a turnaround.

Cultural facilities means facilitating for activities for the preservation and enhancement for the cultural well-being of the community.

Development means all structures and other modifications of the natural landscape above and below ground or water on a particular site.

Diameter at breast height means the diameter of a tree trunk in inches measured by diameter at four and one-half (4½) feet above the ground.

District means a section of the City for which the zoning regulations governing the use of buildings and premises, the height of buildings, setbacks and the intensity of use are uniform.

Dripline means an imaginary vertical line extending downward from the outermost tips of the tree branches to the ground.

Drive-in means an establishment which by design, physical facilities, service, or by packaging procedures encourages or permits customers to receive service or obtain goods while remaining in their motor vehicles.

Drive-through means an establishment which by design, physical facilities, service, or by packaging procedures encourages or permits customers to receive service or obtain goods intended to be consumed off-premises.

Driveway means a means of access for vehicles from a street, approved alley, across a lot or parcel to a parking or loading area, garage, dwelling or other structure or area on the same lot.

Dwelling means any building or portion thereof which is designed for or used exclusively for residential purposes and containing one (1) or more dwelling units. In cases of mixed occupancy where a building is occupied by two (2) or more principal uses, one (1) of which is that of a dwelling, the part so occupied shall be deemed a dwelling for the purpose of this Ordinance, and shall comply with the provisions thereof relative to dwellings.

Dwelling, multiple family. "Multiple family dwelling" means a building or portion thereof containing three (3) or more dwelling units and designated for or occupies as the home of three (3) or more families living independently of each other.

Dwelling, single-family. "Single-family dwelling" means a detached building containing one (1) dwelling unit and designed for or occupied by only one (1) family.

Dwelling, two-family. "Two-family dwelling" means a building designed for or occupied exclusively by two (2) families living independently of each other.

Dwelling unit means one (1) or more rooms with bathroom and principal kitchen facilities designed as a self-contained unit for occupancy by one (1) family for living, cooking and sleeping purposes. The existence of a food preparation area within a room or rooms shall be evidence of the existence of a dwelling unit.

Easement shall mean a grant by the property owner of the use for a specific purpose of a strip of land by the general public, a corporation, or a certain person.

Erected means built, constructed, reconstructed, moved upon, or any physical operations on the premises required for the building. Excavations, fill, drainage and the like, shall be considered a part of erection when done in conjunction with a structure.

Essential services means the installation, construction, alteration or maintenance by public utilities or governmental agencies of underground, surface or overhead communication, telephone, electrical, gas, steam, fuel, or water distribution systems, collections, supply or disposal systems, streets, alleys, sidewalks, or trails, including pavement, traffic control devices, signs, poles, wires, mains, drains, sewers, pipes, conduits, cables, padmount transformers, fire alarm and police call boxes, traffic signals, hydrants and similar accessories in connection therewith which are necessary for the furnishing of adequate service by such utilities or government agency for the public health, safety, convenience or welfare and including buildings or structures eight hundred (800) cubic feet or less which are enclosures or shelters for service equipment.

Facade means the exterior wall of a building exposed to public view.

Fall-out shelter. A fall-out shelter is a structure of specific design for protection from radioactive fall-out.

Family means one (1) or more persons occupying a dwelling unit and living as a single housekeeping unit, whether or not related to each other by birth or marriage, as distinguished from persons occupying a boarding house, lodging house or hotel.

Fence means a constructed barrier made of wood, metal, stone, brick or any manufactured materials erected for the enclosure of yard areas.

Flood plain, 100-year. A 100-year flood plain" means the lowland areas of adjoining inland and coastal waters which are identified on Floodway Maps produced by FEMA (Federal Emergency Management Agency) and which are estimated to have a one (1) percent chance of flooding in a given year.

Floor area. See "Gross Floor Area".

Front lot line. In the case of a lot abutting upon only one (1) street, the front lot line is the line separating such lot from such street. In the case of a lot abutting on two (2) or more streets, one (1) lot line shall be elected to be the front lot line for the purposes of this Ordinance, provided, it shall be so designated on the building plans filed for approval with the Code Official.

Frontage means the total continuous width of the front lot line.

Garage, community. A community garage is a space or structure, or series of structures, for the storage of motor vehicles, having no public shop or service in connection therewith, and separated into compartments or sections with separate vehicular entrances, for the use of two (2) or more owners or occupants of property in the vicinity.

Garage, private. A building or a portion of a building not more than one thousand (1,000) square feet in area, in which only private or pleasure-type motor vehicles used by the tenants of the building or buildings on the premises are stored or kept. When a private garage is attached to a main building in a substantial manner by a wall or roof, shall be considered part of the main building.

Garage, public use. A public use garage is a space or structure, other than a private or a community garage, for the storage, care, repair, refinishing, or servicing of motor vehicles, except that a structure or a room used solely for the display and sale of such vehicles, in which they are not operated under their own power, and in connection with which there is no storage, care, repair, refinishing or servicing of vehicles other than those displayed for sale, shall not be considered a garage for the purpose of this Ordinance.

Gasoline service station. A gasoline service station shall mean that portion of a property and all facilities essential thereto, where inflammable liquids, used as motor fuels, are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles. Greasing and oil changes, tire repairs, washing and servicing cars and trucks, and the sale of tires, batteries and other accessories are considered to be accepted functions of a gasoline service station.

Golf course/country club means any golf course, public or private, where the game of golf is played, including accessory uses and buildings customary thereto, but excluding golf driving ranges and miniature golf courses as a principal use.

Grade means:

- A. For buildings having walls adjoining one (1) street only: the elevation of the public sidewalk, top of curb, or centerline of the street right-of-way, whichever is closest to the building, where a building wall adjoins a street.
- B. For buildings having walls adjoining more than one (1) street: the average elevation of the sidewalks, curbs or centerlines of streets, whichever is closest to the building walls adjoining the streets.

- C. For buildings having no wall adjoining the street: the average of the lowest and highest ground surface elevations in an area within six (6) feet of the foundation line of a building or structure.

Any building or structure wall within thirty-five (35) feet of a public or private street shall be considered as adjoining the street.

Greenbelt means a strip of land of definite width and location upon which existing vegetation is preserved or an area is reserved for the planting of living plant materials to serve as an obscuring screen or buffer strip in carrying out the requirements of this Code.

Grocery store means a retail establishment primarily selling prepackaged and perishable food as well as other convenience and household goods.

Gross floor area (GFA) means the sum of the gross horizontal areas of the several floors of a building or structure from the exterior face of exterior walls, or from the centerline of a wall separating two (2) buildings, but excluding any space where the floor-to-ceiling height is less than six (6) feet.

Hedge means a fence or boundary formed by closely grown bushes, shrubs, or low trees.

Height of building means the vertical distance from the grade to the highest point on a mansard, quonset, flat roof or to the median height between the eaves and the ridge for gable, hip and gambrel roofs.

Home. Home shall mean an abode for convalescents; for religious orders or groups; for nurses, for students and other related purposes.

Home occupation. Home occupation means a use conducted entirely within an enclosed building, employing only the inhabitants thereof, which is clearly incidental and secondary to residential occupancy and does not change the character thereof. Specifically excluded is the storage and display of merchandise not produced by such home, occupation, and any activity involving any building alterations, window display, construction features, equipment, machinery or outdoor storage, any of which is visible from off the lot on which it is located. Such use shall not become noxious or endanger public health, sanitation or general welfare.

Hotel means a building in which lodging or boarding are provided and offered to the public for compensation and in which ingress to and egress from all rooms is made through an inside lobby or office normally supervised at all hours. As such, it is open to the public as distinguished from a boarding house, lodging house or apartment.

Impervious surface means any material which prevents, impedes or slows infiltration or absorption of stormwater directly into the ground at the rate of absorption of vegetation bearing soils, including building, asphalt, concrete, gravel and other surfaces.

Impervious surface ratio means the area of impervious surface less those areas used exclusively for pedestrian circulation or outdoor recreational facilities divided by the gross site area.

Interior side lot line. An interior side lot line is a side line separating a lot from another lot or lots.

Kennel means any lot or premises used for the sale, boarding, or breeding of dogs and cats or the keeping of four (4) or more dogs and cats over the age of six (6) months.

Land clearing means:

- A. The clearing over eight thousand (8,000) square feet of vegetation from any site; or

- B. The removal of more than two hundred (200) trees more than six (6) inches in diameter at breast height within fifty (50) feet of a public or private street or river.

Mowing, trimming or pruning of vegetation to maintain it in a healthy, viable condition is not considered land clearing.

Landing area means a landing pad, area, strip, deck or building roof used to launch or receive aircraft, including, but not limited to, power-driven winged or delta-winged aircraft, gliders, balloons and helicopters.

Landscaping means the finishing and adjournment of unpaved yard areas using the combination of planted trees, vines, ground cover, flowers or turf. In addition, the combination or design may include rock ground cover, earth mounds, and such structural features as fountains, pools, art work, screens, walls, fences, and benches.

Laundromat means a business that provides home-type washing, drying and/or ironing machines for hire to be used by customers on the premises or operated for the benefit of retail customers who bring in and call for laundry.

Lot means a parcel of land occupied or intended for occupancy by a use permitted in this Zoning Code, including one (1) principal building together with accessory buildings, open spaces and parking areas required by this Zoning Code, and having its principal frontage upon a street or upon an officially approved private street. The word "lot" includes the words "plot", "tract" or "parcel".

Lot, interior. An interior lot is a lot other than a corner lot.

Lot, irregular. An irregularly shaped lot means a lot which provides a minimum of thirty (30) feet of street frontage, provides a minimum width of sixty (60) feet at the proposed building line and complies with all other yard, area, height, and similar requirements for the Zoning District in which it is located.

Lot, corner means a lot which has at least two (2) contiguous sides abutting on and at the intersection of two (2) or more streets.

Lot of record means a lot whose existence, location and dimensions have been legally recorded or registered in a deed or on a plat.

Lot, through means an interior lot having frontage on two (2) more or less parallel streets.

Lot width means the horizontal distance between side lot lines measured parallel to the front lot line at the minimum required front setback line.

Manufacturing means the production of articles for use from raw or prepared materials by giving these materials new forms, qualities, properties or combinations, whether by hand labor or machine.

Marina means a commercial mooring, berthing, or docking facility for watercraft with or without provisions for launching, haulout, servicing, fueling or sales of accessory supplies.

Mechanical amusement arcade means any place, premises, room or establishment in which a substantial and significant portion of the business is devoted to the operation of mechanical amusement devices, or in which more than five (5) mechanical amusement devices are located and available for operation. For purposes of this Zoning Code, a mechanical amusement arcade shall not include the following:

- A. Mechanical/electronic amusement devices located in bars, taverns and cocktail lounges which are properly licensed by the State when the devices are located so as to be an integral part of the licensed operation and are available only to tavern patrons; and

- B. Mechanical amusement devices located in motels or hotels when the devices are generally available only to registered guests.

Mechanical amusement device means any machine which, upon the insertion of a coin, slug, token, plate or disk, or upon payment of a price, may be operated by the public generally for use as a game, entertainment or amusement, including, but not limited to, games registering a score; electronic video games; mechanical and/or electronic devices, such as marble machines, pinball machines, mechanical grab machines, shuffle board game machines, pool tables and billiard tables; and all game operations or transactions similar thereto, whether operated by hand, electric power or a combination thereof. "Mechanical amusement device" shall not include:

- A. A juke box or other similar device which plays only music for money;
- B. A full-size bowling lane or alley;
- C. A movie theater seating more than ten (10) persons; and
- D. A vending machine dispensing food, drink, tobacco, toys or written material, which material can be utilized away from the premises where the machine is located and does not require further participation by the person inserting the item or paying the price at the location of the machine. A mechanical amusement device located on property used solely for a residential purpose or a private club, which device is not available for use by the general public, shall be exempt from this definition.

Micro brewery means a facility as defined as such by the State of Michigan.

Motel means a building or group of buildings having units containing sleeping accommodations which are available for temporary occupancy primarily by automobile travelers and usually providing separate entrances for the units.

Nonconforming structure, permitted. A permitted nonconforming structure is a structure lawfully existing at the time of adoption of this Ordinance, or any amendments thereto, which does not conform to the regulations of the district in which it is located, and for which a certificate of occupancy has been issued and is in force.

Nonconforming use, permitted. A permitted nonconforming use is a use which lawfully occupies a structure or land at the time of adoption of this Ordinance, or any amendments thereto, which does not conform with the regulations of the district in which it is located, and for which a certificate of occupancy has been issued and is in force.

Nursing home. See "Residential care and treatment facility".

Off-street parking. The following definitions shall apply to vehicle parking in all areas except parking in garages and parking along streets and alleys:

- A. *Business parking area.* A parking area owned and operated by a business or professional establishment (such as a doctor's or lawyer's office) and used as a convenience in connection therewith.
- B. *Commercial parking area.* A parking area owned and operated by a private individual or concern for the purpose of charging a fee for parking privileges.
- C. *Public and quasi-public parking areas.* A parking area owned and operated by a governmental unit, educational institution, church, charitable institution, or other comparable public or quasi-public unit, association, corporation, or institution.

Open space, common. "Common open space" means land within or related to a development, not individually owned, that is designed and intended for the common use or enjoyment of the residents and their guests of the development and may include such complementary structures and improvements as are necessary and appropriate.

Ordinary high water mark means the line between upland and bottomland which persists through successive changes in water levels, below which the presence and

action of the water is so common or recurrent that the character of the land is marked distinctively from the upland.

Owner means any person having an ownership interest in a premises as shown on the latest City of Escanaba tax records.

Parcel. See "Lot".

Parking area means any public or private area, under or outside of a building or structure, designed and used for parking motor vehicles, including parking lots, driveways and legally designated areas of public streets.

Parking area, commercial. "Commercial parking area" means a tract of land which is used for the storage of motor vehicles, which is not accessory to any other use on the same or any other lot and which contains parking space rented to the general public or reserved for individuals by the hour, day, week or month.

Parking area, off-street. "Off-street parking area" means a land surface or facility providing vehicular parking space off a street together with drives and maneuvering lanes so as to provide access for entrance and exit for the parking of motor vehicles.

Parking area, private. "Private parking area" means a parking area for the exclusive use of the owners, tenants, lessees, or occupants of the lot on which the parking area is located or their customers, employees, or whomever else they permit to use the parking area.

Parking space means an area of land provided for vehicles exclusive of drives, aisles, or entrances giving access thereto, which is fully accessible for parking of permitted vehicles.

Parking structure means a building or structure consisting of more than one (1) level and used to store motor vehicles.

Pavement. "Pavement" and "paved" mean permanent and completely covered with concrete, a bituminous surface, brick or other surface approved by the City Engineer.

Pedestrian scale means design and construction considerations based upon the scale of a human being which imbue occupants and users of the built environment with a sense of comfort and security.

Pedestrian travel way shall mean a paved walk for pedestrians at the side of a street such as the sidewalk.

Person means a corporation, association, partnership, trust, firm or similar activity as well as an individual.

Place of worship means a building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose.

Plat means a map of a subdivision of land recorded with the register of deeds pursuant to state statute.

Principal use means the main use of land or structures as distinguished from a secondary or accessory use.

Public utility means any person, firm or corporation, municipal department, board or commission duly authorized to furnish and furnishing under federal, state or municipal regulations to the public; gas, steam, electricity, sewage, disposal, communication, cable, telephone, telegraph, transportation or water.

R-District means a residence district, namely in Residence "A", "B", "C", and "C-2" District.

Radius. A measurement consisting of a straight line, without regard to intervening structures or objects, from the nearest property line of the lot or lots to the nearest existing property line of the nearest existing lot or lots.

Rear lot line. The rear lot line is that boundary which is opposite and most distant from the front lot line. In the case of a lot pointed at the rear, the rear lot line shall be an imaginary line parallel to the front lot line, not less than ten (10) feet long lying farthest from the front lot line and wholly within the lot.

Recreational facilities means a public or private non-profit facility for athletic activities such as ice arenas, stadiums, indoor sports arenas, community recreation centers, fitness centers, indoor and outdoor swimming pools.

Recreational vehicle means a vehicle primarily designed and used as a temporary living quarters for recreational, camping, or travel purposes including a vehicle having its own motor power or a vehicle mounted on or drawn by another vehicle.

Residential care and treatment facility means a facility providing:

- A. Services, programs and temporary shelter for residents who are undergoing alcohol or substance abuse rehabilitation;
- B. Temporary emergency shelter and services for battered individuals and their children in a residence structure; and
- C. Housing and personal services such as nursing, recreation, housekeeping and food preparation in a residential structure for persons who are not otherwise able to provide those services themselves and are dependent upon others for doing so.

But not including an adult or juvenile correction institution or transitional housing.

Restaurant, family means an establishment where food and drink are prepared and served to seated customers. Customer turnover rates are typically less than one (1) hour. Generally, these establishments serve breakfast, lunch, and dinner and sometimes are open twenty-four (24) hours a day. It may include cafeteria-style facilities.

Restaurant, fast food means an establishment where food and drink are served to customers at a counter. Such establishments may or may not have seating facilities. Generally, food and drink is ordered and taken to be consumed outside the restaurant building.

Restaurant, fine means an establishment where food and drink are prepared and served. Customer turnover rates are typically one (1) hour or longer. Such establishments serve dinner but generally do not serve breakfast and may or may not serve lunch or brunch.

Right-of-way means a public or private street, alley or easement permanently established for the passage of persons or vehicles.

Roadway shall mean that portion of the street available for vehicular traffic, and where curbs are laid, the portion from back-to-back of curbs.

Rooming house means a residential building where rooms or suites of rooms are rented where the renters use common facilities, such as hallways and bathrooms. A rooming house shall not include hotels, motels, apartment houses, two (2) and multi-family dwellings or fraternity and sorority houses.

School means an educational institution under the sponsorship of a private or public agency providing elementary or secondary curriculum, and accredited or licensed by the State of Michigan; but excluding profit-making private trade or commercial schools.

Screen means a structure providing enclosure and a visual barrier between the area enclosed and the adjacent property. A screen may also be nonstructured, consisting of shrubs or other growing materials.

Screen, opaque means a masonry wall, fence sections, earthen berm, evergreen hedge or a combination of these elements which completely interrupt visual contact and provide spatial separation.

Self-Storage Units mean facilities that are attached to one another which may vary in size and or design to facilitate the storage of personal property.

Setback means the distance required between a lot line and a building wall.

Setback, front. "Front setback" means the minimum required distance, extending the full lot width, between the principal building and the front lot line.

Setback, rear. "Rear setback" means the minimum required distance, extending the full lot width, between the principal and accessory buildings and the lot line opposite the front line.

Setback, side. "Side setback" means the minimum required distance, extending from the front setback to the rear setback, between the principal building and accessory building and the side lot line.

Shopping center means those structures which will have five (5) or more separate occupancies and are in excess of fifteen thousand (15,000) square feet of gross floor area.

Side lot line. A side lot is any lot boundary line not a front lot line or a rear lot line.

Sidewalk means a paved walk for pedestrians at the side of a street.

Site diagram means a drawing, drawn to scale, showing the location of buildings and structures on a lot, as well as driveways, curb cuts, alleys, streets, easements and utilities.

Site plan means a plan showing all salient features of a proposed development, so that it may be evaluated in order to determine whether it meets the provisions of this Code.

Special care facilities. A special care facility shall include any dwelling unit intended to be occupied (partially or entirely) for purposes of providing residential care for persons physically or mentally handicapped, mentally ill, drug or alcohol addicts, and including any dwelling units used for similar occupants that are state licensed or state supported, but not including penal or correctional institutions, nor shall the conditions apply to any family-related persons living within a single-family unit.

Stop work order means an administrative order which directs a person not to continue, or not to allow the continuation of an activity which is in violation of this Code.

Story. A story is that portion of a building between one (1) floor level and the floor level next above it, or between the uppermost floor and the roof. Any story lying more than fifty (50) percent by volume below the highest level of the adjoining ground, and any mezzanine, balcony or similar story having a floor area of less than fifty (50) percent of the floor area of the story immediately above it, (or where there is no story above, less than fifty (50) percent of the floor area of the story immediately below it) shall not be counted as a story in measuring the height of buildings under this Ordinance.

Story, half. A half-story is an uppermost story lying under a sloping roof, the usable floor area of which does not exceed seventy-five (75) percent of the floor area of the story immediately below it, and not used or designed, arranged or intended to be used, in whole or in part, as an independent housekeeping unit or dwelling.

Street shall mean all property dedicated or intended for public or private use, for access to abutting lands or subject to public easements, therefore, and whether designated as

a street, highway, thoroughfare, parkway, throughway, expressway, road, avenue, boulevard, land, place, circle, or however otherwise designated. Street does not mean alley. See also "Street, private".

Street, access. "Access street" means a street or alley designed primarily to provide access to properties.

Street lot line. A "Street lot line" is a lot line separating a lot from a street.

Street, major (principal/arterial). "Major street" means a street designed to carry high traffic volumes through the community and is designated as a major street in the Major Street Plan for the City. The right-of-way width for major streets shall conform to the Major Street Plan of the Master Plan and to all subsequent amendments or additions thereto.

Street, minor. "Minor street" means a street not designated as a major street in the Major Street Plan for the City. The minimum right-of-way for minor streets shall be sixty (60) feet, or as designed on a precise plat.

Street, private. "Private street" means an interior circulation road designed and constructed to carry vehicular traffic from public streets within or adjoining a site to private buildings or land uses, to parking and service areas, and which is not maintained by the public.

Street, urban collector. "Urban Collector" means a street designated as a major street in the Major Street Plan for the City. The minimum right-of-way for urban collector streets shall be eighty (80) feet, or as designated on a precise plat.

Structural alterations means any change in a building requiring a building permit.

Structure means anything constructed or erected, the use of which requires a more or less permanent location on the ground or an attachment to something having a permanent location on the ground, including, but not limited to, freestanding signs, billboards, back stops for tennis courts, wireless towers, and pergolas.

Subdivide or Subdivision means the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representative, successors or assigns for the purpose of sale, or lease of more than one (1) year, or of building development that results in one (1) or more parcels of land less than forty (40) acres or the equivalent, and that is not exempted from the platting requirements of the State of Michigan Land Division Act 591, PA of 1996, Act 87, and PA of 1997, as amended. Subdivide or subdivision does not include a property transfer between two (2) or more adjacent parcels, if the property taken from one (1) parcel is added to an adjacent parcel; and any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of the State of Michigan Land Division Act or the requirements of an applicable Escanaba Land Division Ordinance.

Subdivider shall mean any person dividing or proposing to divide land so as to constitute a subdivision and includes any agent of the subdivider.

Trailer means any enclosure used for living, sleeping, business or storage purposes, having no foundation other than wheels, blocks, skids, jacks, horses or skirtings, and which has been or reasonably may be equipped with wheels or devices for transporting the enclosure from place to place. "Trailer" includes motor homes, travel trailers and camper vans.

Transitional housing means a facility which is operated by a government or a nonprofit agency providing interim sleeping and bath accommodations; interim eating and cooking facilities; and professional services to assist individuals or families in locating permanent housing.

Treelawn means the area of public right-of-way lying between the curb line of a curbed street or developed travelway of a noncurbed street and the nearest private property line substantially parallel to said street.

Trip end means the total of all motor vehicle trips entering plus all motor vehicle trips leaving a designated land use or building over a given period of time.

Tourist home means a single-family dwelling owned and occupied by a person renting out not more than three (3) rooms for compensation to persons who do not stay for more than seven (7) consecutive days.

Townhouse means a multiple dwelling in which each dwelling unit share a common wall with at least one (1) other dwelling unit and in which each dwelling unit has living space on the ground floor and has a separate ground-floor entrance.

Usable floor area means the area used for or intended to be used for the sale of merchandise or services, or use to serve patrons, clients or customers. Such floor area which is used or intended to be used principally for the storage or processing of merchandise, hallways or for utilities or sanitary facilities, shall be excluded from this computation of "Usable Floor Area". Measurement of usable floor area shall be the sum of the horizontal areas of the several floors of the building, measured from the interior faces of the exterior walls.

Wall shall mean a barrier made of masonry, wood, metal, or natural hedging forming a long rampart.

Yard means an open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided in this Zoning Code.

Yard, front means all land extending across the width of a property and lying between the building line and the front lot line.

Yard, rear means all land extending across the width of the property and lying between the principal building and the rear lot line.

Yard, side means all land lying between a principal building and the side lot lines and extending from the front to the rear of the principal building.

Zoning Code means Ordinance No. 1028, as amended, of the Code of Ordinances of the City of Escanaba and includes the text of this Zoning Code as well as all maps, tables, graphics, schedules as included or attached as enacted or subsequently amended.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 112. - Uses Not Mentioned.

112.1. *General.* When a use is not expressly mentioned in this Zoning Code, the Code Official shall make an interpretation as to what district or districts should accommodate the use. The decision shall be based on the intent of each district, similar uses mentioned in a district, and recognized rules of interpretation. The Code Official's decision shall be appealable to the Board of Zoning Appeals.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 113. - Temporary Buildings.

113.1. *General.* Temporary buildings used in conjunction with construction work only may be permitted in any district during the period that the construction work is in progress, but such temporary buildings shall be removed upon the completion of the construction work.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 114. - Recreational Vehicles and Trailers.

114.1. *General.* Recreational vehicles and trailers shall not be used for general living purposes in any district other than in a licensed campground and/or trailer park.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 115. - Tents or Portable Buildings.

115.1. *General.* The use and occupancy of a tent or portable building for the purpose of general living quarters is not permitted in any zoning district.

(Ord. No. 1028, Ch. I, 10-16-03)

CHAPTER II
SAVINGS CLAUSE

If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

The City Council hereby declares that it would have passed this Ordinance, section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

CHAPTER III
CONFLICTING ORDINANCES REPEALING CLAUSE

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

CHAPTER IV
EFFECTIVE DATE

This Ordinance shall be in full force and effect ten (10) days after its passage and publication.

APPROVED:

APPROVED:

John M. A. Bergman
City Attorney

Marc D. Tall
Mayor

Date Approved: (Month) (Date), 2019
Date Published: (Month) (Date), 2019

Attest

Phil DeMay
City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an ordinance duly adopted by the City Council of the City of Escanaba, County of Delta, Michigan at a Regular Meeting held on the (Date) day of (Month), 2019 and was published in the Daily Press, a newspaper of general circulation in the City of Escanaba on (Month) (Date), 2019, and said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Phil DeMay
City Clerk

Agenda Item: PH-2
Date: 12-19-19

City Council Agenda Item Request

Date: 12/09/2019

Name: Roxanne Spencer

Department: Planning & Zoning

Item: Amendment to Zoning Ordinance, Ch. 2-Administration, Enforcement and Penalty

Meeting date requested: 12/19/2019

Explanation for request:

Administration is requesting the City Council to consider approval and adoption of Ordinance No. 1219, An Ordinance to Amend Chapter II of Appendix A as Codified Under the Code of Ordinances, An Ordinance Amending Ordinance No. 1028, by Amending Selected Sections of Chapter 2 - Administration, Enforcement and Penalty.

ORDINANCE NO. 1219

**AN ORDINANCE TO AMEND CHAPTER II OF APPENDIX A AS CODIFIED UNDER
THE CODE OF ORDINANCES**

THE CITY OF ESCANABA HEREBY ORDAINS:

CHAPTER I

Chapter II of Appendix A as codified under the Code of Ordinances shall be amended to read as follows:

CHAPTER 2 - ADMINISTRATION, ENFORCEMENT AND PENALTY

Section 201. - General.

201.1. *Purpose.* The purpose of this Ordinance is to safeguard the health, property and public welfare by controlling the design, location, use or occupancy of all buildings and structures through the regulated and orderly development of land in land uses within the City of Escanaba.

201.2. *Scope.* The provisions of this Ordinance shall apply to the construction, addition, alteration, moving, repair and use of any building, structure, parcel of land or sign within a jurisdiction, except work located primarily in a public way, public utility towers and poles, and public utilities unless specifically mentioned in this code. Where, in any specific case, different sections of this Ordinance specify different requirements, the more restrictive shall govern. Where there is conflict between a general requirement and a specific requirement, the specific requirement shall be applicable in fulfilling these purposes, this Ordinance is intended to benefit the public as a whole and not any specific person or class of persons. Although, through the implementation, administration and enforcement of this Ordinance, benefits and detriments will be enjoyed or suffered by specific individuals, such is merely a byproduct of the overall benefit to the whole community. If any portion of this Ordinance is held invalid for any reason, the remaining herein shall not be affected.

201.3. *Liability.* The Code Official, or designee, charged with the enforcement of this Ordinance, acting in good faith and without malice in the discharge of the duties described in this Ordinance, shall not be personally liable for any damage that may accrue to persons or property as a result of an act or by the reason of an act or omission in the discharge of such duties. A suit brought against the Code Official or employee because such act or omission performed by the Code Official or employee in the enforcement of any provision of such Ordinances or other pertinent laws or ordinances implemented through the enforcement of this Ordinance or enforced by the enforcement agency shall be defended by the City until final termination of such proceedings, and any judgment resulting therefrom shall be assumed by the City. This Ordinance shall not be construed to relieve from or lessen the responsibility of any person owning, operating or controlling any building or parcel of land for any damages to persons or property caused by defects, nor shall the City of Escanaba be held as assuming any such liability by reason of the reviews or permits issued under this Ordinance.

201.4. *Cooperation of Other Officials and Officers.* The Code Official shall be authorized to request, and shall receive so far as is required in the discharge of the duties described in this Ordinance, the assistance and cooperation of other officials of the City.

201.5. *Cross References, as amended.*

- A. MI Planning Enabling Act; MCL 125.3801 et. seq.
- B. MI Zoning Enabling Act; MCL 125.3101 et. Seq.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 202. - Existing Buildings and Uses.

202.1. *General.* Lawfully established buildings and uses in existence at the time of the adoption of this Ordinance shall be permitted to have their existing use or occupancy continued, provided such use is not dangerous to life.

- 202.2. *Additions, alterations or repairs.* Additions, alterations or repairs shall be permitted to be made to any building or use without requiring the existing building or use to comply with the requirements of this Code, provided the addition, alteration or repair conforms to that required for a new building or use.
- 202.3. *Maintenance.* All buildings or uses, both existing and new, and all parts thereof, shall be maintained. The owner or designated agent shall be responsible for the maintenance of buildings and parcels of land. To determine compliance with this section, the Code Official shall be permitted to cause any structure or use to be inspected.
- 202.4. *Transported and temporary buildings, structures and uses.* Buildings or structures moved or transported into or within the City shall comply with the provisions of this Ordinance for new buildings and structures. Temporary buildings, structures and uses such as reviewing stands and other miscellaneous structures, sheds, canopies or fences used for the protection of the public shall be permitted to be erected, provided a special approval is received from the Code Official for a limited period of time. Temporary buildings or structures shall be completely removed upon the expiration of the time limit stated in the permit.
- 202.5. *Illegal uses.* Nonconforming uses of buildings or land established without a required zoning permit or land use permit, or those nonconforming uses which cannot be proven conclusively as existing prior to the effective date of this Ordinance upon which the nonconformity is based, are declared illegal uses and shall be discontinued.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 203. - Powers and Duties of the Code Official.

- 203.1. *General.* This section establishes the duty and responsibilities for the Code Official or other officials and agencies, with respect to the administration of this Ordinance. The Code Official and/or designee shall be referred to hereafter as "the Code Official".
- 203.1.1. *Administration.* In addition to any authority granted to the staff of the City of Escanaba by other laws and Ordinances, the Code Official and the employees under his or her control shall have the following powers and duties to be carried out with the regulations which include, but are not limited to, the following:
- A. To serve as staff to the City Manager with regard to their functions under these regulations, and to inform such bodies of all facts and information at their disposal with respect to applications for amendments to the text of these regulations, and amendments to the Zoning Maps, the preparation, adoption, and updating of land use plans, or any other matters brought before them.
 - B. To maintain the text of these regulations and the zoning maps.
 - C. To maintain development review files and other public records related to the administration and enforcement of these regulations.
 - D. To review applications for land use permits.
 - E. To recommend and comment on proposed amendments to these regulations and to the zoning maps.
 - F. To establish such rules of procedure as are necessary and proper for the administration of their responsibilities under these regulations.
- 203.2. *Deputies.* The City Manager may appoint such number of technical officers or other employees as shall be authorized from time to time.
- 203.3. *Review and Approvals.* The Code Official shall be authorized to undertake reviews, make recommendations and grant approvals as set forth in this Ordinance.
- 203.4. *Master Plan.* The Code Official shall assist the Planning Commission in the development and implementation of the Master Plan.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 204. - Administrative Reviews and Permits.

- 204.1. *Review of Land Use Permits.* All applications for land use permits and amendments thereto shall be submitted to the Code Official for review and approved prior to permit issuance. Each application shall include a site plan and/or site sketch and all data necessary to show that the requirements of this Ordinance are met.
- 204.2. *Permit Required.* A land use permit (zoning approval) is required before a building or structure is built, rebuilt, converted, enlarged, demolished or structurally altered and before land clearing (as defined in this Code). A land use permit is also required before a parking area is constructed, reconstructed or enlarged. It shall be unlawful to use or to permit the use of any building or premises or part thereof hereafter created, erected, or altered, or to change or enlarge the use of any building or premises or part thereof until a properly endorsed land use permit is issued by the Code Official.
- 204.3. *Application Forms.* The Code Official shall have application forms for a land use permit available at the office of the Code Official.
- 204.4. *Site Plans.* All land use permit applications shall be accompanied by an accurate site plan and/or site sketch plan or diagram complying with the requirements of Chapter 18 Site Plan and Sketch Plan Standards.
- 204.5. *Survey.* When requested by the Code Official, all dimensions shown on the site plan relating to the locations and size of the lot shall be based on an actual survey and the lot shall be staked out on the ground before construction is started.
- 204.6. *Records.* The original copy of such applications and site plans shall be kept by the Code Official and a copy shall be kept at the site at all times during construction.
- 204.7. *Fees.* Land use permit application fees shall be established by resolution of the City Council. A special fee may be required for any project which may, in the opinion of the Code Official or Planning Commission, create an identifiable and potentially negative impact on public infrastructure or services or upon adjacent properties and because of which, professional input is desired before a decision to approve, deny or approve with conditions is made. The Code Official may require and hold such fee in escrow to be used when the professional services must be paid.
- 204.8. *Time Limitation.* Whenever the buildings, premises, and uses thereof as set forth on the application are in conformity with the provisions of this Ordinance, it shall be the duty of the Code Official to issue, within ten (10) days after the receipt of such application, a land use permit, and when such permit is refused, to state such refusal in writing with cause.
- 204.9. *Expiration of Permit.* Unless the land use permit states differently, a permit expires after twelve (12) months from the date of granting such permit if the activity is not at least seventy-five (75) percent completed, and after twenty-four (24) months if not one hundred (100) percent completed. Completion percentages shall be determined in the sole discretion of the Code Official, subject to appeal to the Zoning Board Appeals.
- 204.10. *Land.* Land use permits for the use of vacant land or for a change in the character of the use of land shall be applied for before such land is occupied or used.
- 204.11. *Statement of Record.* A land use permit shall state that the building or the proposed use of the building or land complies with this Zoning Code. A record of all certificates shall be kept on file.
- 204.12. *Revocation.* The Code Official may revoke any land use permit for failure to comply with any provisions of this Code, the application or permit or for a material error, false statement or misrepresentation made in the application. The owner or owner's agent shall be notified of such revocation in writing. Upon such revocation, all further construction activities and new use of the site shall cease, other than for the purpose of correcting the violation. The Code Official may suspend any land use permit if there are reasonable grounds for revocation and may issue a stop work order or halt all construction activities and land use pending a decision on revoking the permit.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 205. - Special Land Use Permit Approval.

- 205.1. *General.* A hearing before the Planning Commission shall be conducted on all Special Land Use Permit requests. The procedure for the Planning Commission public hearing shall be as follows:
- 205.2. *Initiation Request.* Requests for special land use permits shall be filed with the Code Official. A request must be submitted at least twenty- eight(28) business days before the Commission meeting at which it will be considered. A request for special land use permit may be submitted by a property owner, lessee or agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property.
- 205.3. *Filing Fees.* The filing fees for a special land use permit shall be established by resolution of the City Council.
- 205.4. *Notices.* Notice of a request for a special land use permit will be given pursuant to State Statute. The Planning Commission shall fix a reasonable time for the hearing of the request and give notice of such request to the persons to whom real property within three hundred (300) feet of the premises in question is assessed, and to the occupants of single and two-family dwellings within three hundred (300) feet. The notice shall be delivered personally or by mail addressed to the respective owners and tenants at the address given in the last assessment role. If a tenant's name is not know, the term "Occupant" may be used. Upon the hearing, the party may appear in person, by agent, or by attorney. All notices shall be mailed or delivered at least fifteen (15) days prior to the meeting of the Commission and shall include a description of the proposed land use, a description of the subject property, the time and location of the public hearing, and when and where written comments will be received.
- 205.5. *Protest.* If a protest of the proposed special land use permit is presented to the Planning Commission at or before the public hearing date on the request and it is properly signed by the owners of at least twenty (20) percent of the noticed area of land included in the request, excluding publicly owned land, or by owners of at least twenty (20) percent of the area of and included within an area extending out at least one hundred (100) feet from any point on the boundary of land included in the request, excluding publicly owned land, then such request for special land use permit approval shall be passed only upon an affirmative vote of three-fourths ($\frac{3}{4}$) of the members of the Planning Commission.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 206. - Nonconforming Uses.

- 206.1. *General Classifications.* There should be the following classifications of nonconforming uses:
- 206.1.1. *CLASS 1:* Those where the use of the building or land does not conform to the zoning district use regulations;
- 206.1.2. *CLASS 2:* Those where the use of the building or land does not comply with the zoning use regulations, but such use does meet the dimensional or parking regulations of this code. Where the only reason for a nonconforming use being Class 2 is noncompliance with current off-street parking regulations, the provisions of this Zoning Code regarding off-street parking and powers of the Zoning Board of Appeals shall take precedence over this section to the extent they are inconsistent; and
- 206.1.3. *CLASS 3:* Those where the use of the building or land is a use as of right or legal nonconforming use, but is later allowed only by special land use permit in the zone in which located.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 207. - General Regulations.

207.1. *Nonconforming Uses.* The lawful use of land or structure exactly as the land or structure existed at the time of the enactment of the ordinance affecting that land or structure, may be continued, except as otherwise provided in this Ordinance, although that use or structure does not conform with that ordinance.

207.2. *Continuance of Nonconforming Use or Structure.* The lawful use of any land or structure, exactly such as existed at the time of enactment of this Ordinance may be continued even though such use or structure does not conform to the provisions of this ordinance, provided, that a Certificate of Occupancy for Nonconforming Zoning Use is issued for such use on an annual basis. Application for a Certificate of Occupancy for Nonconforming Zoning Use shall be in writing on standard forms furnished by the City. Certificates of Occupancy for Nonconforming Zoning Use and structures shall be in force not more than one year and may be renewed each year at the time of expiration. It is the duty of the property owner to arrange for the issuance of a new Certificate of Occupancy for Nonconforming Zoning Use prior to the expiration of the previous Certificate of Occupancy for Nonconforming Zoning Use. In the event a Certificate of Occupancy for Nonconforming Zoning Use is not renewed by the owner, the nonconforming use authorization will be terminated. In the event that a user or structure becomes nonconforming by reason of subsequent amendments to this Ordinance, such nonconformity may be continued upon procurement of a Certificate of Occupancy as prescribed above.

Structures or uses which are nonconforming by reason of yards, height, area, or off-street parking provisions only, may be extended, enlarged, altered, remodeled or modernized provided that no additional encroachment of the height and area provisions are occasioned thereby.

207.3. *Change or Extension of Use.* A nonconforming use shall not be changed, unless changed to a conforming use. A nonconforming use if changed to a conforming use may not thereafter be changed back to the original use or to any nonconforming use. For the purpose of this ordinance, a use shall be decreed to be changed if changed from a use listed in one of the numbered sections of Chapters 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 21 hereof to a use not listed in such paragraphs. A nonconforming use shall not be extended, except as provided in section 206 and Section 207 of this Ordinance. No building, structure, or premises where a nonconforming use has ceased for more than one year shall again be devoted to a nonconforming use. The existence of the nonconforming nature of the use shall not, in itself, be the sole reason for the refusal of permits and licenses, nor other activities normal to that use.

207.4. *Restoration and Repairs.* Such repairs and maintenance work as are required to keep a nonconforming building or structure in a modern or sound condition may be made, provided, however, that a nonconforming building or structure which is damaged or partially destroyed by fire, explosion, act of God, or act of a public enemy may be repaired or restored and the occupancy for use of such building or structure or part thereof which existed at the time of such destruction may be continued or resumed, provided that such restoration is started within a period of one (1) year of the time of such damage and diligently prosecuted to completion. This period of time may be extended by the Zoning Board of Appeals (See Section 305.4. Variance Review Criteria) in cases where an undue hardship is incurred. In the event of destruction in excess of eighty (80) percent of its replacement value, a nonconforming building or structure may be rebuilt for its original use as outlined above, except that existing setback and height requirements for the area must be met.

207.5. *Plans Already Filed.* In any case where plans and specifications for a building or structure have been filed, which would conform with the provisions of this Ordinance effective at the date of such filing, but not with the terms of this amendment to this Ordinance, and where a building permit for such building or structure has been issued and construction work started within ninety (90) days of the effective date of this amendment to this Ordinance, such work may proceed provided it is completed within one (1) year of the date of the building permit.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 208. - Loss of Nonconforming Use Status.

- 208.1. *General.* Status as a nonconforming use shall be lost and the nonconforming use shall be deemed a violation of this Zoning Code if any of the following occurs:
- 208.1.1. *Increasing the nonconformity period.* Unless otherwise allowed or accept where permitted by the Zoning Board of Appeals, expansion or change of the use or structure in such a way so as to increase the size, degree or intensity of the nonconformity.
- 208.1.2. *Zoning Violation.* Except for the initial nonconformity, any violation of the zoning code.
- 208.1.3. *Abandonment of the Use.* Intent to abandon a nonconforming use may be presumed where the uses ceases for more than a year and the owner has not expressed in writing an intent to maintain the use within thirty (30) days after being requested in writing to do so. Failure to renew a Certificate of Nonconforming Use within one (1) year following expiration date shall cause the loss of right to continue the nonconforming nature of the use.
- 208.1.4. *Lost Status.* If nonconforming use status is lost, all future use shall be in conformity with this Zoning Code and the initial nonconforming use may not be continued or reestablished.
- 208.2. *Reduction.* If a nonconforming use or structure is reduced or changed in such a way so as to decrease the size, degree, or intensity of the nonconformity, the use or structure may not thereafter be expanded or changed to cause an increase in the nonconformity.
- 208.3. *Elimination.* In accordance with Act 207 of the Public Acts of 1921 (MCL 125.581 et seq.), the City Council may, from time to time, acquire properties on which nonconforming uses or structures are located, by condemnation or otherwise, and may remove such uses or structures and resell the property for a conforming use or develop it for a public use. The net cost of such acquisition may be assessed against a benefit district, or may be paid from other sources of revenue.
- 208.4. *Relation to Nonconforming Uses.* It is not necessary for an owner of a legal nonconforming structure or use to obtain a land use permit in order to maintain its legal, nonconforming status.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 209. - District Boundary Changes.

- 209.1. *General.* The foregoing provisions of this Ordinance shall also apply to buildings, structures, land or uses which hereafter become nonconforming due to any reclassification of districts under this Ordinance or any subsequent amendments to this Ordinance.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 210. - Important Guarantees.

- 210.1. *Required.* To ensure compliance with the Zoning Code and any condition imposed thereunder, the City Council, the Planning Commission, the Zoning Board of Appeals, or the Code Official may require that a guarantee covering the estimated cost of improvements associated with a project for which zoning approval is sought be deposited with the City Treasurer to ensure faithful completion of the improvements.
- 210.2. *Definitions.* As used in this Ordinance:
- A. *Guarantee or improvement guarantee* means a cash deposit, certified check, irrevocable bank letter of credit or surety bond in such form as determined by the City Attorney.
- B. *Improvements* means those features and actions associated with a project, that are considered necessary by the body or official granting zoning approval to protect natural resources or the health, safety and welfare of the residents of the City and future users or inhabitants of the proposed project or project area, including roadways, lighting, utilities, sidewalks, parking, screening and

drainage. "Improvements" does not include the entire project which is the subject of zoning approval.

210.3. *Deposit.* The guarantee shall be deposited at the time of the issuance of the permit authorizing the activity of the project. The City may not require deposit of the guarantee before the date upon which the City is prepared to issue the permit.

210.4. *Rebate.* The Code Official shall establish written procedures under which a cash deposit, in reasonable proportion to the ratio of work completed on the required improvements, is rebated as work progresses. Such procedures shall be on file in the office of the Code Official. The Code Official may amend such procedures, but such amendments shall not affect any guarantee previously deposited with the City, except upon mutual agreement of the Code Official, the person obtaining the permit to which the guarantee applies and the person making the guarantee.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 211. - Fees and Deposits.

211.1. *General.* At the time of a request for any zoning approval, special land use permit, rezoning request, and site plan review, the applicant shall pay to the City Treasurer a fee as determined by resolution of the City Council. The fee shall cover the approximate cost of the request to appear before the appropriate board. In addition to any established fees, the applicant shall deposit such sum as is determined necessary by the Code Official to cover any extraordinary costs in processing the application.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 212. - Violations.

212.1. *Unlawful Acts.* It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, or maintain any building or land or cause or permit the same to be done in violation of this Ordinance. When any building or parcel of land regulated by this Ordinance is being used contrary to this Ordinance, the Code Official shall be permitted to order such use discontinued and the structure, parcel of land, or portion thereof, vacated by the notice served on any person causing such use to be continued. Such person shall discontinue the use within the time prescribed by the Code Official after receipt of such notice to make the structure, parcel of land, or portion thereof, comply with the requirements of this Ordinance.

212.2. *Civil Infraction Citation.* A person who violates any provision of the Zoning Code is responsible for a municipal civil infraction subject to payment of a civil fine of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus costs and other sanctions for each infraction. Increased civil fines may be imposed for repeated violations by a person of any requirement of this Code. As used in this section, "repeat offense" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provisions (i) committed by a person within any six-month period (unless some other period is specifically provided by this Code or any ordinance) and (ii) for which the person admits responsibility or is determined to be responsible. The increased fine for a repeat offense which is a first repeat offense shall be no less than two hundred fifty dollars (\$250.00), plus costs. The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be no less than five hundred dollars (\$500.00), plus costs. Each day on which any violation of this Code continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense. The owner of any building or premises, or part thereof where any conditions in violation of this Ordinance exist or shall be created, and any architect, builder, contractor, agent, corporation or person employed in connection therewith, and who has assisted knowingly in the commission of any such violation shall each be guilty of a separate offense and upon conviction thereof shall be liable to the fines as provided.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 213. - Declaration of Nuisances.

213.1. *General.* Buildings and structures built, altered, razed or converted, or uses carried on, in violation of this Zoning Code, are hereby declared to be a nuisance per se. Any court of competent jurisdiction may order such nuisance abated, and the owner or agent in charge of the building or land may be adjudged guilty of maintaining a nuisance per se. A person may not assert that a use is a nonconforming use or vested right, by way of defense to any Code enforcement action or otherwise until that person has exhausted all administrative remedies for determination of a nonconforming use.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 214. - Unlawful Use Not Authorized.

214.1. *General.* Nothing in this Ordinance shall be interpreted as authorization for or approval of the continuance of the use of a structure or premises in violation of zoning provisions in effect at the time of the effective date of this Ordinance or any amendments thereto.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 215. - Validity.

215.1. *General.* Should any section, clause or provision of this Ordinance be declared by a court to be invalid, the same shall not effect the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

215.2. *Validity of Licenses, Permits and Approvals.* For the issuance of any license, permit or approval for which the commission or board is responsible, the Code Official shall require that the development or use in question, proceed only in accordance with the terms of such license, permit or approval, including any requirements or conditions established as a condition of issuance. Except as specifically provided for in this Ordinance and conditions of approval, the securing of one (1) required review or approval shall not exempt the recipient from the necessity of securing any other required review or approval.

(Ord. No. 1028, Ch. I, 10-16-03)

CHAPTER II
SAVINGS CLAUSE

If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

The City Council hereby declares that it would have passed this Ordinance, section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

CHAPTER III
CONFLICTING ORDINANCES REPEALING CLAUSE

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

CHAPTER IV
EFFECTIVE DATE

This Ordinance shall be in full force and effect ten (10) days after its passage and publication.

APPROVED:

John M. A. Bergman
City Attorney

Date Approved: (Month) (Date), 2019
Date Published: (Month) (Date), 2019

APPROVED:

Marc D. Tall
Mayor

Attest

Phil DeMay
City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an ordinance duly adopted by the City Council of the City of Escanaba, County of Delta, Michigan at a Regular Meeting held on the (Date) day of (Month), 2019 and was published in the Daily Press, a newspaper of general circulation in the City of Escanaba on (Month) (Date), 2019, and said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Phil DeMay
City Clerk

Agenda Item: PH-3
Date: 12-19-19

City Council Agenda Item Request

Date: 12/09/2019

Name: Roxanne Spencer

Department: Planning & Zoning

Item: Amendment to Zoning Ordinance, Ch. 3 - Board of Zoning Appeals

Meeting date requested: 12/19/2019

Explanation for request:

Administration is requesting the City Council to consider approval and adoption of Ordinance No. 1220, An Ordinance to Amend Chapter II of Appendix A as Codified Under the Code of Ordinances, An Ordinance Amending Ordinance No. 1028, by Amending Selected Sections of Chapter 3 - Board of Zoning Appeals.

ORDINANCE NO. 1220

**AN ORDINANCE TO AMEND CHAPTER III OF APPENDIX A AS CODIFIED UNDER
THE CODE OF ORDINANCES**

THE CITY OF ESCANABA HEREBY ORDAINS:

CHAPTER I

Chapter III of Appendix A as codified under the Code of Ordinances shall be amended to read as follows:

CHAPTER 3 – ZONING BOARD OF APPEALS

Section 301. - General.

- 301.1. *Purpose.* This section addresses the duties and responsibilities of the Zoning Board of Appeals, hereafter referred to as "the Board" and other officials and agencies, with respect to the administration of this chapter.
- 301.2. *Cross References, as amended.*
- A. P.A. 12 of 2008, the Michigan Zoning Enabling Act, as amended.
 - B. P.A. 33 of 2008, the Michigan Planning Enabling Act, as amended.
- 301.3. *Establishment of the Board.* The Zoning Board of Appeals is established in accordance with P.A. 12 of 2008, as amended. The Board shall perform its duties and exercise its powers as provided by state law and this Zoning Code such that the intent of this Zoning Code is observed and the health, safety and welfare of the public is secured.
- 301.4. *Filing for Appeal.* Any person with standing, aggrieved or affected by any decision of the Code Official shall be permitted to appeal to the Zoning Board of Appeals by written request with the Code Official. Upon furnishing the proper information, the Code Official shall transmit to the Zoning Board of Appeals all papers and pertinent data related to the appeal.
- 301.5. *Time Limit.* An appeal shall only be considered if filed within fifteen (15) days after the cause arises or the appeal shall not be considered. If such an appeal is not made, the decision of the Code Official shall be considered final.
- 301.6. *Stays of Proceedings.* An appeal stays all proceedings from further action unless there is immediate danger to public health and safety.

(Ord. No. 1028, Ch. I, 10-16-03; Ord. No. 1089, Ch. I, 11-6-08)

Section 302. - Zoning Board of Appeals; Composition; Terms of Office.

- 302.1. *Membership.* The Zoning Board of Appeals shall consist of six (6) members appointed by the City Council for terms of three (3) years. Terms shall be overlapping to provide for the appointment of an equal number of members each year.
- 302.2. *Alternate Members.* The City Council may appoint two (2) alternate members for terms of three (3) years each. An alternate member may be called by the Chairperson of the Board or the Code Official to sit as a regular member of the Board in the absence of a regular member if:
- 302.2.1. *Attendance.* A regular member is unable to attend a regularly scheduled meeting;
 - 302.2.2. *Conflict of Interest.* A regular member has abstained from a decision for reason of a conflict of interest; or
 - 302.2.3. *Duration.* The alternate member having been appointed shall serve on an appeal until a final decision has been made. Such alternate member shall have the same voting rights as a regular member of the Board. Absence, inability to attend or abstention because of a conflict of interest may be established by communication of a Board member at least twenty-four (24) hours prior to the regularly scheduled Board meeting.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 303. - Hearings.

303.1. *General.* The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof in accordance with section 304.1.4. Upon the hearing, a party may appear in person or by agent or by attorney. Meetings of the Zoning Board of Appeals shall be held at the call of the Code Official and at such other times as the Board may determine. There shall be a fixed place of meeting and all meetings shall be open to the public. The Board shall follow rules of procedure and keep a public record of its proceedings showing the action of the Board and the vote of each member upon each question considered. The presence of four (4) members shall be necessary to constitute a quorum and a majority vote of the members of the Board shall be necessary to reverse an order, requirement, decision or determination of an administrative official or to decide in favor of the applicant in the case of a variance, exception or interpretation, except that the concurring vote of four (4) of the members shall be necessary to grant a variance from uses of land permitted by this Zoning Code.

(Ord. No. 1028, Ch. I, 10-16-03; Ord. No. 1089, Ch. I, 11-6-08)

Section 304. - Rules of procedure.

304.1. *General.* The Zoning Board of Appeals shall follow such procedures as are established by statute, Ordinance and resolution of the Board. These procedures shall include:

304.1.1. *Appeals Generally.* For purposes of these rules of procedure, an appeal shall include applications for appeals, interpretations, variances, exceptions and matters involving nonconforming uses.

304.1.2. *Initiating Appeals.* Appeals shall be filed with the Code Official within fifteen (15) working days after written notice is given of the action being appealed. An appeal may be taken by a person aggrieved, or by the Code Official. A petition for variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property.

304.1.3. *Filing Fees.* The filing fee for appeals shall be established by resolution of the City Council.

304.1.4. *Notice/Advertisements.* Notice shall be given to all persons to whom real property is assessed within three hundred (300) feet of the property that is the subject of the request and to the occupants of all structures within three hundred (300) feet of the subject property regardless of whether the property or structure is located in the zoning jurisdiction not less than fifteen (15) days before the date the request will be considered. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different persons, one (1) occupant of each unit or spatial area shall be given notice. If a single structure contains more than four (4) dwelling units or other district spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure. Required notice shall be considered given when personally delivered or when deposited during normal business hours for delivery with the United States Postal Service or other public or private delivery service. Additionally, one (1) advertisement in a local newspaper of general circulation indicating the nature of the appeal and the date of the hearing will be placed not less than fifteen (15) days before the date the request will be considered. A minor deviation in the notice published in the newspaper or in the time of appearance of such notice in the newspaper shall not affect the validity of the proceedings of the Board unless there is a clear demonstration of prejudice as a result of such minor deviation. A notice under this section shall describe the nature of the request, indicate the property that is the subject of the request, list all existing street addresses within the property, state when and where the request will be considered and indicate when and where written comments will be received concerning the request.

304.1.5. *Application Contents.* In addition to all other requirements of statute and ordinance, applications shall be in a form determined by the Code Official and shall contain such information as the Code Official shall direct. Such applications shall also include the following:

- A. A site plan or site diagram reflecting accurate dimensions of the property, the location of structures on the property and the location of buildings on adjacent properties. If requested by the Board or the Code Official, such drawing shall be a survey performed by a registered land surveyor.
- B. The name, address and telephone number of the applicant and the authorized agents of the applicant.
- C. The application must be signed by the owner or someone acting upon written consent of the owner, which written consent must be submitted with the application.
- D. All previous appeals involving the property noted on the application as to the subject, date and outcome of the appeal.

304.1.6. *Conflict of Interest.* Members shall disqualify themselves from deliberating and voting on any matter in which a member has any personal, professional, or financial interest (direct or indirect). Before deliberating any appeal, the Chairperson shall ask if any member has such a conflict. Any member must clearly state the conflict for the record.

304.1.7. *Representation at Hearing.* The applicant or the applicant's authorized agent must be present at the public hearing to properly answer questions concerning the appeal. If the applicant or agent is not present, the appeal may be deferred until the next meeting or dismissed, at the direction of the Board.

304.1.8. *Reconsideration.* An applicant may re-appeal a decision after twelve (12) months from the decision of the Board. The Board will not reconsider any appeal within twelve (12) months from the date of the decision unless it can be shown by the applicant that there has been substantially changed circumstances affecting the appeal, which circumstances were not known to the Board at the previous hearing. The substantial change in circumstances shall be described, in writing, by the applicant at the time of the application.

304.1.9. *Instructions.* The Code Official shall prepare a written description of the procedures of the Board and instructions to all potential applicants. Such written instruction shall be submitted to the Board for its approval prior to the public distribution.

304.1.10. *Other Rules.* The Board may adopt such other rules to govern its procedure as it deems advisable, provided such rules are not in conflict with statute or ordinance.

(Ord. No. 1028, Ch. I, 10-16-03; Ord. No. 1089, Ch. I, 11-6-08)

Section 305. - Powers and Duties of the Zoning Board of Appeals.

305.1. *General* The Board shall have the power to hear and decide on appeals where it is alleged that there is an error in any order, requirement, decision, determination or interpretation by the Code Official. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of appeal from and shall make an order, requirement, decision, or determination as in the Board's opinion ought to be made in the premises. If there are practical difficulties or unnecessary hardship in carrying out the strict letter of the ordinance, the Zoning Board of Appeals may, in passing on appeals, grant a variance in any of the provisions relating to the construction, or structural changes in, equipment, or alteration of buildings or structures, or the use of land, buildings, or structures, so that the spirit of the ordinance shall be observed, public safety secured, and substantial justice done. The Zoning Board of Appeals shall not have the power to vary a standard for a Planned Unit Development or a Special Land Use Permit.

305.2. *Appeals.* The Board shall hear and decide appeals where it is alleged by the applicant that there is an error in any order, requirement, decision or determination

made by the Code Official or body charged with the enforcement of this Zoning Code.

305.3. *Interpretations.* Upon application by the Code Official or person interested in a specific affected parcel of land, when other administrative appeals have been exhausted, the Board shall have the power to:

- A. Interpret the Zoning Code in such a way as to carry out its intent and purpose;
- B. Determine the precise location of a zoning district and special area boundaries;
- C. Classify a use which is not specifically mentioned, determine the district within which the use is permitted and determine the necessary parking to support the use; and
- D. Determine the off-street parking and loading space requirements of this Zoning Code.

305.4. *Variance Review Criteria.* The Board shall have the power to authorize specific variances or departures from this Zoning Code, if all of the basic conditions are satisfied, and if there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Zoning Code. A variance from the dimensional requirements of this Zoning Code may only be granted if it is determined that all basic conditions have been satisfied and that there is a practical difficulty in carrying out the requirement. A variance from the use requirements of this Zoning Code may only be granted if it is determined that all basic conditions have been satisfied and that there is an unnecessary hardship created by those use restrictions.

305.5 *Required Standards of Review.* The Zoning Board of Appeals shall make findings that a

“practical difficulty” has been shown by the applicant by finding that all of the following requirements have been met by the applicant for a variance.

- A. **Special Conditions and Circumstances Unique to the Land, Structure, or Building.** That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings in the same district;
- B. **Rights of Similar Properties in the Same Districts.** That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other similar properties in the same district under the terms of this Ordinance;
- C. **Not a Result of Actions of the Applicant.** That the special conditions and circumstances do not result from the actions of the applicant;
- D. **Special Privileges Prohibited.** That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district;
- E. **Comparison to Other Lands, Structures, or Buildings Not a Factor.** That no nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- F. **Strict Compliance is Unnecessarily Burdensome.** That strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose and would thereby render the conformity unnecessarily burdensome for other than financial reasons;
- G. **Substantial Justice.** That a variance would do substantial justice to the applicant, as well as to other property owners in the district (the ZBA, however, may determine that a reduced relaxation would give substantial relief and be more just);
- H. **Impact.** That the proposed variance will not impair an adequate supply of light and air to adjacent property or increase the congestion in public streets; that the variance will not increase the hazard of fire or flood or endanger public safety;

that that the variance will not unreasonably diminish or impair established property values within the surrounding area; and that the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- I. **Minimum Variance Necessary.** That the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
- J. **Purpose and Intent of the Zoning Ordinance.** That the granting of the variance, will be in harmony with the general purpose and intent of this Ordinance.

305.6.- *Use Variance.* The Board shall not grant a variance to allow the establishment of a use in a Zoning District when such use is prohibited by the provisions of this chapter. An unnecessary hardship shall exist where the lot considered in combination with other land owned by the applicant adjacent thereto has no reasonable value as zoned.

305.7. *Other Powers.* In specific cases, the Zoning Board of Appeals may vary or nullify the regulations herein established, in harmony with the general purpose and intent, as follows:

- A. Extend the period of time during which reconstruction must be started when restoring damage brought about by fire, explosion, act of God, or act of a public enemy as provided in Section 207.4 Restoration and Repairs of this Ordinance.
- B. Where the street layout actually on the ground varies from the street layout shown on the Zoning Map, apply the designations shown on the mapped street in such a way as to carry out the intent and purpose of the Ordinance for the particular area in question.

305.8. *Decisions.* The Board shall not have the authority to alter or change this Ordinance or Zoning Map to allow a use which would be inconsistent with the requirements of this Ordinance. Provided, however, that in interpreting and applying the provisions of this Ordinance, the requirements shall be deemed to be the spirit and intent of the Ordinance and does not constitute the granting of a special privilege.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 306. - Time Limitations of Orders.

306.1. *Miscellaneous.* An order of the Zoning Board of Appeals permitting the erection or alteration of a building is valid for no longer than one (1) year, unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

306.2. *Uses.* An order of the Board permitting the use of a building or premises is valid for no longer than one (1) year unless such use is established within such period. However, where such permitted use is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for such erection or alteration is obtained within such period and if such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

306.3. *Modifications.* Time limits established by this Chapter may be lengthened or shortened by the Board as a condition imposed under the standards for conditions set forth in this Zoning Code.

306.4. *Expiration.* In addition to any expiration provision contained in an order itself, an order of the Zoning Board of Appeals may be declared by the Code Official to be expired where there has been change in a material circumstance or fact upon which the order was issued, such as, but not limited to, destruction of a building or natural feature, vacation of a street or a change in topography.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 307. - Court Review.

307.1. *Circuit Court Review.* A decision of the Zoning Board of Appeals shall be final. However, any party having a substantial interest affected by an order, determination or decision of the Zoning Board of Appeals may appeal to the Circuit Court if such appeal is made to the Court within thirty (30) days after the Zoning Board of Appeals issues its decision in writing, or within twenty-one (21) days after the Zoning Board of Appeals approves its minutes.

307.2. *Standards for Review.* The Circuit Court shall review the record and decision of the Zoning Board of Appeals to ensure that the decision:

- A. Complies with the constitution and the laws of the State;
- B. Is based upon proper procedure;
- C. Is supported by competent, material, and substantial evidence on the record; and
- D. Represents the reasonable exercise of discretion granted to the Zoning Board of Appeals.

307.3. *Inadequate Record.* If the Court finds the record of the Zoning Board of Appeals inadequate to make the review required, or that additional evidence exists which is material and with good reason was not presented to the Zoning Board of Appeals, the Court shall order further proceedings before the Zoning Board of Appeals on considers which the Court considered proper. The Zoning Board of Appeals may modify its findings and decision as a result of the new proceedings, or may affirm its original decision.

307.4 The court may affirm, reverse, or modify the decision of the Zoning Board of Appeals. The court may make other orders as justice requires.

(Ord. No. 1028, Ch. I, 10-16-03; Ord. No. 1089, Ch. I, 11-6-08)

CHAPTER II
SAVINGS CLAUSE

If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

The City Council hereby declares that it would have passed this Ordinance, section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

CHAPTER III
CONFLICTING ORDINANCES REPEALING CLAUSE

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

CHAPTER IV
EFFECTIVE DATE

This Ordinance shall be in full force and effect ten (10) days after its passage and publication.

APPROVED:

APPROVED:

John M. A. Bergman
City Attorney

Marc D. Tall
Mayor

Date Approved: (Month) (Date), 2019
Date Published: (Month) (Date), 2019

Attest

Phil DeMay
City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an ordinance duly adopted by the City Council of the City of Escanaba, County of Delta, Michigan at a Regular Meeting held on the (Date) day of (Month), 2019 and was published in the Daily Press, a newspaper of general circulation in the City of Escanaba on (Month) (Date), 2019, and said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Phil DeMay
City Clerk

Agenda Item: PH-4
Date: 12-19-19

City Council Agenda Item Request

Date: 12/09/2019

Name: Roxanne Spencer

Department: Planning & Zoning

Item: Amendment to Zoning Ordinance, Ch. 4 - Districts, Boundaries and Zoning Map

Meeting date requested: 12/19/2019

Explanation for request:

Administration is requesting the City Council to consider approval and adoption of Ordinance No. 1221, An Ordinance to Amend Chapter II of Appendix A as Codified Under the Code of Ordinances, An Ordinance Amending Ordinance No. 1028, by Amending Section 401 - District Classifications of Chapter 4 - District, Boundaries, and Zoning Map.

ORDINANCE NO. 1221

**AN ORDINANCE TO AMEND CHAPTER IV OF APPENDIX A AS CODIFIED UNDER
THE CODE OF ORDINANCES**

THE CITY OF ESCANABA HEREBY ORDAINS:

CHAPTER I

Chapter IV of Appendix A as codified under the Code of Ordinances shall be amended to read as follows:

CHAPTER 4 - DISTRICTS, BOUNDARIES AND ZONING MAP

Section 401. - District Classifications.

401.1. *General.* In order to classify, regulate and restrict the locations of use and locations of buildings designated for specific areas; and to regulate and determine the areas of yards, courts and other open spaces within or surrounding such buildings, property is hereby classified into districts as prescribed in this chapter.

401.2. *Cross References, as amended.*

- A. Michigan Planning Enabling Act 33 of 2008
- B. Michigan Zoning Enabling Act 110 of 2006

401.3. *Districts Established.* For the purpose of this Ordinance, the City of Escanaba is hereby divided into the following districts:

- OS – Open Space District
- A – Single-Family Dwelling District
- B – Two-Family Dwelling District
- C – Multiple-Family Dwelling District
- C2 –Residential Planned Unit Development District
- D – Local Business District
- E – Commercial District
- E1 – Planned Commercial Development District
- E2 – Special Planned District
- E3 – Central Retail Commercial District
- F – Light Manufacturing District
- F1 – Industrial Park District
- G – Heavy Manufacturing District

401.4. *Zoning Map.* The boundaries of the districts are shown upon the map adopted by the City Council designated as the Zoning Map. Such Map is to be filed in the office of the City Clerk. The Zoning Map and all notations, references, amendments and other information shown thereon are hereby declared to be a part of this Zoning Code and shall have the same force and effect as if the Zoning Map and all notations, references, amendments and other information shown thereon were fully set forth and described herein.

401.5. *Amendments.* The Council may from time to time on its motion or on petition, amend, supplement, or change the district boundaries or regulations herein established in the manner prescribed by the Michigan Zoning Enabling Act 110 of 2006. Whenever the owners of fifty (50) percent or more of the frontage in any district or part thereof shall present to the Council a petition in writing, duly signed, requesting an amendment, supplement, change, or repeal of the provisions prescribed for such district or part thereof, it shall be the duty of the Council to vote upon said petition within ninety (90) days after the filing of the same by the petitioners with the Council. If any area is hereafter transferred to another district by a change in district boundaries by an amendment as above provided, the provisions

of this Ordinance, relating to building or uses of buildings or premises existing at the time of passage of this Ordinance shall apply to buildings or uses of buildings or premises existing at the time of passage of such amendment in such transferred area.

401.6. *Interpretation of District Boundaries.* Where uncertainty exists with respect to the boundaries of the various districts, as shown on the Zoning Map, the following rules apply:

- A. If districts are bounded approximately by street, private street or alley lines, the centerline of the street, private street or alley shall be construed to be the boundary of the district.
- B. If the district boundaries are not indicated and if the property is now or later divided into blocks and lots, the district boundaries shall be construed to be the nearest lot lines.
- C. In unsubdivided property, the district boundary lines shall be determined by use of the scale appearing on the Zoning Map.
- D. Where the boundary line of a district divides a lot in a single ownership at the time of the passage of this Ordinance, the Code Official may permit the extension of a use permitted on the less restricted portion of such lot to the entire lot, but not for a distance at any point of more than fifty (50) feet beyond the district boundary line.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 402. - Categories Within Zoning Districts.

402.1. *General.* Any building or structure built, rebuilt, converted, enlarged, moved or structurally altered shall be used only for a use allowed in the district in which the building or structure is located. In order to insure all possible benefits and protection for the zoning districts in this Code, the land uses have been classified into three (3) categories:

- A. *Uses Permitted by Right.* The primary uses and structures specified for which the zoning district has been established.
- B. *Uses Permitted by Special Land Use Permit.* Uses and structures which have been generally accepted as reasonably compatible with the primary uses and structures within the zoning district, but could present optional injurious effects upon the primary uses and structures within the zoning district and therefore require special consideration in relation to the welfare of adjacent properties and to the community as a whole.
- C. *Uses Permitted by Planned Unit Development.* Uses and structures, compatible with the primary uses and structures within the zoning district, and which are provided a heightened degree of flexibility in site development standards to encourage mixed uses, open space preservation, preservation of natural resources or energy conservation.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 403. - Zoning of Streets, Alleys and Railroad Corridors.

403.1. *General.* Streets, alleys and railroad corridors shall be zoned the same as the adjacent land is zoned to the centerline. In addition, they may be used for customary and incidental transportation purposes including commercial transportation such as taxicabs.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 404. - Zoning of Vacated Streets.

404.1. *General.* Whenever any street, alley or other public way is vacated by official action, the zoning district adjoining the side of such street, alley or public way shall be automatically extended to the new property line resulting from such vacation. All

area included in the vacation shall thereafter be subject to all appropriate regulations of the extended district.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 405. - Zoning of Water Areas.

405.1. *General.* All areas in the City which are under water and not shown as included within any district shall be subject to all of the regulations of the district which immediately adjoins the water area. If the water area adjoins two (2) or more districts, the boundaries of each district shall be construed to extend to the center of the water area.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 406. - Zoning of Annexed Land.

406.1. *General.* All territory which may hereafter be annexed to the City of Escanaba shall be considered to be in the most restrictive Single-Family District for not more than ninety (90) days from the date of annexation, by which time the legislative body shall zone the territory.

(Ord. No. 1028, Ch. I, 10-16-03)

Section 407. - Incorporating Uses Allowed.

407.1. *General.* When the regulations of a zoning district incorporate the uses allowed in a different zoning district, only those uses listed in the section entitled "uses allowed" are incorporated and not any of those uses allowed by special land use permit or any other special zoning permission.

(Ord. No. 1028, Ch. I, 10-16-03)

CHAPTER II
SAVINGS CLAUSE

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CHAPTER III
CONFLICTING ORDINANCES REPEALING CLAUSE

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

CHAPTER IV
EFFECTIVE DATE

This Ordinance shall be in full force and effect ten (10) days after its passage and publication.

APPROVED:

APPROVED:

John M. A. Bergman
City Attorney

Marc D. Tall
Mayor

Date Approved: (Month) (Date), 2019
Date Published: (Month) (Date), 2019

Attest

Phil DeMay
City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an ordinance duly adopted by the City Council of the City of Escanaba, County of Delta, Michigan at a Regular Meeting held on the (Date) day of (Month), 2019 and was published in the Daily Press, a newspaper of general circulation in the City of Escanaba on (Month) (Date), 2019, and said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Phil DeMay
City Clerk

Agenda Item: PH-5
Date: 12-19-19

City Council Agenda Item Request

Date: 12/09/2019

Name: Roxanne Spencer

Department: Planning & Zoning

Item: Amendment to Zoning Ordinance, Ch. 21 - Central Retail Commercial District

Meeting date requested: 12/19/2019

Explanation for request:

Administration is requesting the City Council to consider approval and adoption of Ordinance No. 1222, An Ordinance to Amend Chapter XXI of Appendix A as Codified Under the Code of Ordinances, An Ordinance Amending Ordinance No. 1075, by Amending Section 2112 - Fences and Walls of Chapter 21 - Central Retail Commercial District.

ORDINANCE NO. 1222

**AN ORDINANCE TO AMEND CHAPTER XXI OF APPENDIX A AS CODIFIED
UNDER THE CODE OF ORDINANCES**

THE CITY OF ESCANABA HEREBY ORDAINS:

CHAPTER I

Chapter XXI of Appendix A as codified under the Code of Ordinances shall be amended to read as follows:

CHAPTER 21 - CENTRAL RETAIL COMMERCIAL DISTRICT ("E-3")

Section 2101. - General Provisions.

2101.1. *Purpose.* The Central Retail Commercial District is for the purpose of accommodating central retail and related services.

2101.1.1. *Boundaries.* The boundaries are that part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 30, Township 39 North, Range 22 West lying in the City of Escanaba, Delta County, Michigan, described as follows: That portion of blks 56, 64 and 75, lying south of alley and that portion of blks 55, 65 and 74, lying north of alley and that portion of Ludington Street, North and South Tenth Streets, North and South Eleventh Streets and North and South Twelfth Streets lying adjacent to and between said blks and alleys within the "Original Plat of The City of Escanaba". Also that portion of blks 80, 87 and 93, lying south of alley and that portion of blks 81, 86 and 94, lying north of alley and that portion of Ludington Street, North and South Thirteenth Streets lying adjacent to and between said blks and alleys within the "Proprietors 1st Addition to the City of Escanaba". More commonly known as Ludington Street from 9th Street to 14th Street from Ludington Street to the north side alley between Ludington Street and 1st. Avenue North and from Ludington Street to the south side alley between Ludington Street and 1st. Avenue South.

2101.2. *Cross References, as amended.*

- A. Zoning and planning in home rules cities; MCL 117.41.
- B. Regulation of location of trades, buildings and uses by local authorities; MCL 125.581.
- C. Regulation of buildings; authority to zone; MCL 125.582.
- D. Regulation of congested areas; MCL 125.583.
- E. Uses of land or structures not conforming to ordinances; powers of legislative bodies; acquisition of property; MCL 125.583a.

(Ord. No. 1075, Ch. I, 9-6-07)

Section 2102. - Uses Permitted in a Central Retail Commercial District.

2102.1. *General.* In a Central Retail Commercial District, a building, structure, or premises, may be erected or used for one (1) or more of the following specified purposes:

- A. Retail stores supplying commodities for residents such as bakeries, ice cream, grocery and liquor stores, newsstands, furniture, home decorating, floor covering, hardware and appliance stores, department stores, stationery stores, sporting goods stores, pet shops, retail nurseries, florist shops, automobile accessory stores and similar retail uses.
- B. Civic and cultural facilities, indoor theaters, conference center.
- C. Eating and drinking places to include banquet facilities, not including drive-in service places.
- D. Banks and other financial institutions, not including drive-in service places.

- E. Shops for custom work or the making of articles to be sold at retail on the premises when the making is conducted inside the building. Photographic, dance, music, art, martial arts studios and related sales.
- F. Hotels, Motels, Inns.
- G. Government buildings, essential services.
- H. Copy services, but not including printing press or newspaper.
- I. Bakery and convenience stores, without gasoline service.
- J. Art gallery.
- K. Liquor store.
- L. Travel Agency.
- M. Dwelling units above the first floor of commercial uses.
- N. Business, professional, medical administrative or corporate offices above the first floor of the commercial space.
- O. Fraternal organizations above the first floor of the commercial uses.
- P. Churches above the first floor of the commercial uses.
- Q. Accessory buildings and uses customarily incidental to the permitted uses when located on the same lot or parcel of land.
- R. Commercial amusement - inside arcades, pool halls.
- S. Office business - general, such as professional administrative or clerical service operations, such as attorneys, financial advisors, insurance, travels, and real estate.
- T. Personal services, limited to barber shops, beauty shops, nail salons, therapeutic massage, spas, health clubs, tattooing, tailoring or alterations, taxidermist, touring/guide service.
- U. Recreational business - indoor.
- V. Decorating services, event planning services and photography studios.
- W. Repair services, limited to clock, jewelry, electronic, appliance repair, shoe, upholstery, or locksmith.
- X. On-site service businesses, limited to tailoring, dry cleaners, self-service laundry, and copy centers.
- Y. Music, art, decorating and dance studios.
- Z. Artisan shops.
- AA. Data centers, schools/training centers, research and development.
- BB. Pet shops, indoor kennels with enclosed yards.
- CC. Second hand stores/pawn shops.

(Ord. No. 1075, Ch. I, 9-6-07; Ord. No. [1175](#), Ch. VIII, 11-17-16)

Section 2103. - Uses Allowed By Special Land Use Permit.

- 2103.1. *General.* The following uses of land and buildings, together with accessory uses, are allowed in the Central Retail Commercial District if a special land use permit is issued according to the standards of this chapter:
- A. Eating and drinking places which include drive-in service.
 - B. Banks and other financial institutions which provide drive-in services.
 - C. Outdoor vendors. Open air markets.

(Ord. No. 1075, Ch. I, 9-6-07)

Section 2104. - Accessory Uses Permitted in a Central Retail Commercial District—
When Located on the Same Lot with the Principal Use.

2104.1. *Allowed Uses.* Uses customarily incident to any of the permitted uses and located on the same lot therewith, provided all area and yard requirements are met.

(Ord. No. 1075, Ch. I, 9-6-07)

Section 2105. - Setbacks.

2105.1. *Front Yard Requirement.*

2105.1.1. *Front Yard.* No front yard is required.

2105.2. *Side Yard Requirement.*

2105.2.1. *Central Retail Nature.* No side yards are required.

2105.3. *Rear Yard Requirement.* In a Central Retail Commercial District there shall be a rear yard of at least twenty-five (25) feet in depth on every lot as measured at right angles from the rear lot line to the nearest part of the principal building.

2105.4. *Through Lots and Corner Lots.* Through lots and corner lots having a frontage on two (2) streets shall provide the required setback on both streets.

(Ord. No. 1075, Ch. I, 9-6-07)

Section 2106. - Encroachments Into Setbacks.

2106.1. *Projections Into Required Yards.* Outside stairways, fire escapes, fire towers, chimneys, platforms, enclosed balconies/porches, boiler/furnace flues, eaves, sills, belt courses, cornices and other projections shall be considered part of the building, subject to the setback requirements of the building.

Exceptions:

- A. Terraces, patios, decks, uncovered and unenclosed porches which do not extend more than thirty (30) inches above grade at the nearest side property line may project into a required side setback provided these projections are no closer than two (2) feet from the subject side property line.
- B. An unenclosed balcony, porch or deck may project into a rear setback for a distance not exceeding twenty (20) feet.

2106.2. *Handicap Ramp Procedure/Other Encroachments.* The Code Official shall have the authority to approve a handicapped ramp or other encroachment into a yard, if the encroachment is required by law and there is no other reasonable location.

2106.2.1. *Neighbor Notification.* Before granting any administrative approval, the Code Official shall take reasonable steps to inform the owners of the property abutting on that side of the location of the requested approval or on all sides, if all sides would be affected. The Code Official shall inform the relevant abutting owner(s) that the owner is entitled to object. The abutting owner shall have three (3) working days to make comments to the Code Official. The Code Official shall take into consideration any comments received.

2106.2.2. *Variance.* If the Code Official determines that there is not a basis for administrative approval, then the applicant must seek a variance.

2106.2.3. *Administrative Denial.* If any person who is deemed to have the status of an aggrieved person objects to the administrative approval with a stated reason before the Code Official's written decision, then the Code Official shall deny the request for an administrative approval and the applicant must file for a variance.

(Ord. No. 1075, Ch. I, 9-6-07)

Section 2107. - Lot Density.

2107.1. *Area Percentage.* When the principal use is commercial, buildings or structures hereafter erected shall not occupy more than eight-five (85) percent of the area lot.

(Ord. No. 1075, Ch. I, 9-6-07)

Section 2108. - Building Height.

2108.1. *General.* In a Central Retail Commercial District, no building or structure shall exceed one hundred (100) feet in height.

Exceptions:

- A. Steeple, clock towers, wireless tower, monuments, chimneys, water tanks, elevator bulk heads, or stage tower may be erected to a height not exceeding twice the height of the attached building.
- B. Parapet walls may be used to screen existing equipment may be erected if the wall extends around the perimeter of the building and incorporates exterior building materials similar to those of the main building.
- C. The Planning Commission may authorize an increase in height provided the request is consistent with the intent of this chapter.

(Ord. No. 1075, Ch. I, 9-6-07)

Section 2109. - Accessory Buildings/Private Garages.

2109.1. *Distances.* Accessory buildings other than private garages shall be at least ten (10) feet from any dwelling situated on the same lot and at least six (6) feet from any other building on adjacent lot or accessory building on the same lot.

2109.2. *Front Yard Space.* Accessory buildings may not occupy front yard space.

2109.3. *Side Yard Space.* Accessory buildings and portions thereof may occupy that portion of the side yard which is in excess of the side yard requirements.

2109.4. *Rear Yard Space.* Accessory buildings and portions thereof may occupy up to fifty (50) percent of the required rear yard space except where a rear yard abuts for its full width upon a street said buildings and portions thereof shall not occupy any of the required minimum rear yard space. On a corner lot, accessory buildings shall not occupy any part of that portion of the rear yard lying nearer to the street than the width of the side yard required for the same lot and abutting on such street.

2109.5. *Accessory Height.* Accessory buildings other than a private garage shall not exceed twelve (12) feet in height from the ground floor to mean height as defined in Chapter 1, General Provisions, Section 111, General Definitions. The height of a private garage shall not exceed eighteen (18) feet in height from ground floor to mean height as defined in Chapter 1, General Provisions, Section 111, General Definitions or the height of the principal building, whichever is less.

2109.6. *Accessory Design and Finish.* Accessory buildings must be designed to match the architectural elements and styles of the main structure and the surrounding features of the area to include structure finishes.

(Ord. No. 1075, Ch. I, 9-6-07)

Section 2110. - Parking.

2110.1. *General.* There shall be provided at the time of the erection of any main building or at the time such buildings are altered, enlarged, converted or increased in capacity minimum off-street parking space with adequate provisions for ingress and egress by vehicles in accordance with the requirements of Chapter 17, Parking and Circulation requirements.

(Ord. No. 1075, Ch. I, 9-6-07)

Section 2111. - Landscaping/Paving Requirements.

2111.1. *General.* The applicant shall submit a comprehensive landscape plan for any project in the Central Retail Commercial District, identifying the location and size of both existing vegetation to be retained and proposed new vegetation, typical planting materials, the phasing of landscape installation, and planting methods. Such landscape plan shall include detail on the landscape maintenance procedures to be followed to assure the continued viability of all plantings and landscaped areas.

2111.2. *Maintenance.* All live landscaping required by this Ordinance shall be properly maintained. All dead or dying landscaping shall be replaced immediately and all sodded areas mowed, fertilized, and irrigated on a regular basis.

2111.3. *Parking Areas and Driveways.* All parking areas and driveways shall be paved.

(Ord. No. 1075, Ch. I, 9-6-07)

Section 2112. - Fences and Walls.

2112.1. *General.* The following restriction shall apply to all fences and walls located within the zoned district, except for fences and walls surrounding public utility structures or radio, television, or microwave transmission or relay towers:

- A. No person shall construct or cause to have constructed any fence or wall upon any property within the City without first having to obtain a permit.
- B. Any person desiring to build or to cause to be built a fence or wall upon their property or property owned by the City shall first apply to the City for a permit. Such application shall contain any and all information required for the determination of whether the erection of such fence or wall will violate any ordinance of the City.
- C. No fence or wall located in the yard shall be built to a height greater than four (4) feet above grade in the front yard and six (6) feet in the side and rear yard area. On a corner lot fences and walls nearer the street than the established building line shall not exceed four (4) in height.
- D. The capital of a fence post or column may extend up to two (2) feet above the maximum fence/wall height limit. 4. No partition fence or wall shall extend towards the street beyond two (2) feet from the established lot line, nor shall any fence or wall or portion thereof be erected in any area on or parallel to the front lot line except that it shall be located a minimum of two (2) feet behind the inside edge of the established sidewalk line.
- E. No person being the owner, lessee, occupant or agent for the same, of any building in the City shall erect, cause to be erected, or maintain on or about the walk or stairway to the entrance to such building, any railing, fence, guard or other projection on which there shall be affixed or placed, or in any manner attached, any barbed wire construction, nor shall there be maintained, either partially or wholly, around any area adjacent to any street, alley, lane or public way, or in or along any street or sidewalk in front or adjacent to any public space or place, or nail or cause the same to be nailed or fastened, in any form, shape or manner, upon any partition form, any such barbed wire construction, nor shall any electrical current be charged through any fence whatsoever.
- F. Any person within the corporate limits of the City erecting or maintaining any fence, wall, or hedge between the edge of the established lot line and the inside edge of the sidewalk or where any sidewalk would normally be, shall be fully responsible for the care and maintenance of the fence, wall, or hedge and shall assume full responsibility for any damaged arising due to the erection of such fence, wall, or hedge.
- G. A special permit granted by the Planning Commission shall be required of those individuals wishing to erect a protective measures fence; such permit shall be granted only after demonstration of the need of such fence. The owner, or agent thereof, of a protective measure fence shall be granted permission to erect necessary and reasonable barriers along the uppermost edge of the protective measures fence that he deems reasonable for the protection of property within the enclosed area.

(Ord. No. 1075, Ch. I, 9-6-07)

Section 2113. - Signs.

2113.1. *Signage.* The intent of the sign design for the Central Retail Commercial District is to establish reasonable and improved standards for business identification. All signs must be architecturally integrated with their surroundings in terms of size, shape, color texture, and lighting so that they are complimentary to the overall design of the building. Signs should be designed with the purpose of promoting retail and street activity while enhancing the pedestrian experience.

2113.1.1. *All signs shall:*

1. Incorporate no flashing or blinking lights. The light source must be directed against the sign, such as that it does not shine into adjacent property or cause glare for motorists or pedestrians.
2. Insure lighting is conveyed in a subtle and attractive appearance under moderate ambient lighting conditions.
3. Not be permitted to cover or obscure architectural features, windows or part of windows.
4. Not contain advertising other than the identity of the business to which it is attached.
5. Upper story tenant signs shall be window signs not exceeding fifteen (15) percent of the window area.
6. Each building/structure shall be limited to the utilization of two (2) sign styles per property, unless otherwise stated.

2113.1.2. *Wall signs.* The total allowable square footage of wall sign area shall be computed based upon the premises frontage as indicated in Table 2113:

TABLE 2113

Premises Frontage (Feet)	Maximum Permitted Sign Copy Area (Square Feet)
20—39	42
40—59	64
60—69	86
70 up	100 Maximum

2113.1.2.1. *Parapet/Roofline.* Not extend above the parapet or roofline of the building to which the sign is attached.

2113.1.2.2. *Location.* Wall signs shall be located on the upper portion of the storefront, within or just above the enframed storefront opening. The length of the sign substrate cannot exceed the width of the enframed storefront. Wall signs must be placed within a clear signable area. Signable areas are defined as an architecturally continuous wall surface uninterrupted by doors, windows or architectural detail.

2113.1.2.3. *Mounting.* Wall signs must be mounted flush and fixed securely to the building wall, projecting no more than twelve (12) inches from the face of a building wall, and not extending sideways beyond the building face or above the highest line of the building to which it is attached.

2113.1.3. *Pole Signs.* Poles Signs shall not be allowed in the Central Retail Commercial District.

2113.1.4. *Ground Signs.* Ground Signs are free standing signs with a lower height configuration and are supported by two (2) columns, uprights, or have a solid footing in or upon the ground. Ground Signs shall not exceed a maximum height, including the sign base, of twelve (12) feet. Ground signs shall not exceed one hundred (100) square feet in area. Businesses that are grouped shall be entitled to one (1) ground sign and one (1) tenant sign that represents

that group of businesses. The total face of a clustered ground tenant signs shall not exceed one hundred forty (140) square feet.

2113.1.5. *Projecting Signs.* Projecting Signs are affixed to the face of a building or structure and projects in a perpendicular manner more than twelve (12) inches from the wall surface or that portion of the building or structure to which it is mounted. Businesses that use a projecting sign and wall sign cannot exceed the total allowable sign area of Table 2113. Projecting Signs shall:

1. Fit within an imaginary rectangle with a maximum area of nine (9) square feet.
2. Provide a minimum height clearance from grade to the lowest edge of a projecting sign of nine (9) feet.
3. Not extend vertically above the roofline or parapet wall of a building.
4. Be oriented to pedestrians passing on the sidewalks in from the building rather than to automobiles or pedestrians on the far side of the street.
5. Maintain a minimum clearance of six (6) inches between the building face and sign and a projection not to exceed forty-two (42) inches.

2113.1.6. *Canopy and Awning Signs.* Canopy and Awning Signs are signs that are painted on, printed on, or attached to an awning or canopy above a business door or window. Canopy and Awning Signs shall:

1. Have sign lettering and/or logo that does not comprise of more than thirty (30) percent of the total exterior surface of an awning or canopy.
2. Be permanently attached to the building.
3. Provide a minimum height clearance from grade to the lowest edge of a canopy or awning of nine (9) feet.
4. Be mounted in the horizontal framing element separating the storefront window from the transom.

2113.1.7. *Tenant Directory Sign.* A Tenant Directory Sign is used to identify multi-tenant buildings and businesses that do not have direct frontage on a public street. Tenant Directory Signs shall:

1. Be mounted flat against a solid wall or incorporated into a ground sign located on the property on which the tenants are located.
2. The maximum sign height, including the sign base, is not to exceed eight (8) feet. The maximum width is not to exceed five (5) feet.
3. The sign copy may include the building name, building logo, address, business tenant's names, and suite numbers or letters.
4. Businesses that are grouped shall be entitled to one (1) tenant directory sign in addition to one (1) ground sign, wall sign, canopy and awning sign.

2113.1.8. *Sidewalk Sign.* Sidewalk signs can be placed on public or private property along public sidewalks outside the normal pedestrian flow which attract pedestrians into shopping areas. Sidewalk signs will not require a permit but must:

1. Be constructed using one (1) of the following durable materials: wooden, plastic or metal signs with open bases, or shaped silhouette signs made of plywood, metal, plastic or similar wood like material that can withstand various weather conditions.
2. Not be constructed of glass, breakable materials, paper, laminated paper, and PVC pipe frames.
3. Designed so that they are uncluttered, with a minimum of text. Logos and graphics are encouraged.
4. A-frame signs may contain one (1) area not larger than one-square foot in size, with small text. The remainder of the sign lettering shall be between two (2) to four (4) inches high.
5. The maximum size of sign permitted is four (4) feet in height and two (2) feet in width.

6. The maximum size shape for shaped silhouette signs is five (5) feet in height and three (3) feet in width.

2113.1.9. *Window Sign.* Window signs are signs that are painted, posted, displayed or etched on an interior translucent or transparent surface, including windows or doors. Window signs will not require a permit but must comply with the following:

1. Shall not exceed twenty-five (25) percent of the window area so that visibility into and out of the window is not obscured.
2. Sign copy cannot exceed ten (10) inches in height.
3. Sign copy must be applied directly to the glazed area.
4. Sign copy must be created from high-quality materials such as paint, vinyl, gold-leaf, or neon.
5. Window signs must be directly applied to the interior face of the glazing or hung inside the window thereby concealing all mounting hardware and equipment.

2113.1.10. *Plaque Signs.* Plaque signs are small versions of tenant signs that are attached to surfaces directly adjacent to shop entries. Plaque signs shall:

1. Be located only on wall surfaces adjacent to tenant entries.
2. Fit within an imaginary rectangle with a maximum area of six (6) square feet.
3. Must include the business name and business logo.
4. Businesses shall be entitled to one (1) plaque sign on the street provided the business has a dedicated ground level entry.

(Ord. No. 1075, Ch. I, 9-6-07)

Section 2114. - Special Requirements.

2114.1. *Prohibited Residential Dwellings.* Residential dwellings are prohibited from occupying the front fifty (50) percent ground floor area in any building fronting on Ludington Street between 9th Street and 14th Street.

2114.2. *Screening.* Dumpsters, solid waste containers, recycling containers (except for recycling containers located at Recycling Collection Centers), or solid waste must be enclosed by a privacy fence/wall constructed of wood, vinyl, cement or metal not less than six (6) feet in height. Dumpsters, solid waste containers, recycling containers (except for recycling containers located at Recycling Collection Centers), or solid waste handling area must be screened from abutting property and from public view from a public street.

2114.3. *Construction Materials.* At least eighty (80) percent of the front side of commercial buildings, as well as any other sides that face adjacent residential areas, shall be finished with face brick, wood, glass, stone, fluted cement block or future acceptable building materials compatible with surrounding properties. All materials shall meet appropriate architectural, aesthetic and safety concerns as provided for in duly adopted ordinances and/or building and fire codes.

2114.4. *Incentives for Better Design and Creativity.* Excellence in design and planning which may be achieved through appropriate innovation and imaginative concepts is encouraged. To accomplish this, alternative compliance may be proposed to the Escanaba Planning Commission in achieving appearance standard goals, provided that such change will produce a more logical and attractive use of property, in that it will be beneficial rather than detrimental to the surrounding area and the community. Proposed design alternatives acceptable under this process must not represent a waiver of requirements: the alternatives must meet or exceed the "spirit" of the law.

(Ord. No. 1075, Ch. I, 9-6-07)

Section 2115. - Conveyance Which Creates Nonconforming Uses Forbidden.

2115.1. *General.* No conveyance of land shall hereafter be made when, as a result of such conveyance, the land or structure of the grantor shall be caused thereby to become a nonconforming use or structure.

(Ord. No. 1075, Ch. I, 9-6-07)

CHAPTER II
SAVINGS CLAUSE

If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

The City Council hereby declares that it would have passed this Ordinance, section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

CHAPTER III
CONFLICTING ORDINANCES REPEALING CLAUSE

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

CHAPTER IV
EFFECTIVE DATE

This Ordinance shall be in full force and effect ten (10) days after its passage and publication.

APPROVED:

APPROVED:

John M. A. Bergman
City Attorney

Marc D. Tall
Mayor

Date Approved: (Month) (Date), 2019
Date Published: (Month) (Date), 2019

Attest

Phil DeMay
City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an ordinance duly adopted by the City Council of the City of Escanaba, County of Delta, Michigan at a Regular Meeting held on the (Date) day of (Month), 2019 and was published in the Daily Press, a newspaper of general circulation in the City of Escanaba on (Month) (Date), 2019, and said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Phil DeMay
City Clerk

Agenda Item: NB - 1

Date: 12/19/19

City Council Agenda Item Request

Date:

Name:

Department:

Item:

Meeting date requested:

Explanation for request: