

CHAPTER 1003

ADMINISTRATION – GENERAL

SECTION:

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1003-1: DEVELOPMENT APPLICATION PROCEDURES: Certain applications of this Ordinance require study and action by the City Council, the Planning Commission, City staff, the applicant, and various experts, in varying combinations dependent upon the nature of the non-standard use or proposed use or change. These include proposed conditional use permits, variances, site plan reviews, Zoning Ordinance text or map amendments, and appeals on zoning questions.

1003-2: DECISIONAL PROCESS: The City Council, acting as the Board of Adjustment and Appeals under Minnesota Statutes 462.357(6), 462.359(4), and 15.99, shall make the decisions within the legislative and executive framework of the City on applicable development applications.

1003-3: APPLICATION PROCEDURE: An application for a Zoning Ordinance text or map amendment, conditional use permit, interim use permit, variance, and/or site plan review shall be processed in accordance with the following procedure:

- A. **Timeline.** Pursuant to Minnesota Statutes 15.99, an application for an amendment shall be approved or denied within sixty (60) days from the date of its official and complete submission unless extended by the City pursuant to statute or a time waiver is granted by the applicant.
- B. **Application.** Applications shall be filed with the Zoning Administrator on an official application form of the City, accompanied by a fee as established by City Council resolution. The application shall also be accompanied by detailed written and graphic materials fully explaining the proposed change, development, or use. The number of copies to be provided and any additional data shall be determined

by the Zoning Administrator. Applications shall be complete before they are accepted. A complete application shall include the following information:

1. A City application form(s) relating to the request signed by all persons with an interest in the subject property affected by the request. A copy of an Owner's Duplicate Certificate of Title or other approved documentation of interest shall also be submitted with the signed application form(s).
 2. All supporting information required by this Ordinance and/or outlined in Section 1009-6 of this Ordinance and application documents included with the City application forms.
 3. Payment of all fees associated with the applicable application(s).
 4. A pre-application meeting shall be required by City staff at which the appropriate application procedures, requirements and applicable provisions relating to the request will be reviewed and explained.
 5. An application will be deemed complete unless the applicant receives written notice within fifteen (15) business days exclusive of Saturdays, Sundays and legal holidays of its submission indicating it is not complete and indicating what information is missing. This notice shall be considered given by its deposit in the U.S. Mail, first class postage prepaid, addressed to any listed applicant at the address given on the application form. In the event the applicant fails to provide an address on the application form, this notice requirement for incomplete applications shall be deemed waived by the applicant.
- C. **Additional Data.** The City Council, Planning Commission, and City staff may request additional information from the applicant concerning the application or may retain expert opinions at the expense of the City, or may require as a condition of proceeding with its consideration of any matter, that the applicant furnish expert opinion and data at the expense of the application.
- D. **Technical Reports.** The Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports where applicable, and provide general assistance in preparing a recommendation on the action to the Planning Commission and City Council. The technical reports are to be entered in and made part of the record of the Planning Commission and forwarded to the City Council.
- E. **Notice of Hearing.** For applications involving zoning amendments, conditional use permits, and variances, the Zoning Administrator shall set a date for a public hearing. Notice of such hearing shall consist of a legal property description, a general description of the property location, and a description of the request to be published in the official newspaper at least ten (10) days prior to the hearing.

Written notices shall be mailed not less than ten (10) days nor more than thirty (30) days prior to the hearing to all owners of property, according to the records available to the City within three hundred fifty (350) feet of each parcel included in the request.

- F. **Notice Not Received.** Failure of the City to send, or a property owner to receive notice shall not invalidate any proceedings under this Ordinance, provided that a bona fide attempt has been made to comply with the requirements of Section 1003-3.E of this Ordinance.
- G. **Hearing.** After receipt of the report of the Zoning Administrator, the Planning Commission shall conduct the public hearing and consider the application at its next regular meeting.
- H. **Presentation of Application.** The applicant or a representative of the applicant shall appear before the Planning Commission in order to present the case for the application and to answer questions concerning the request. Failure of the proponent to appear at either the Planning Commission or City Council, consideration of the matter may constitute grounds for rejection of the application. The Planning Commission and the City Council may each require sworn testimony and a verified transcription of the proceedings at the expense of the City. The applicant shall have the same privilege of presenting sworn testimony and may provide for a transcript of the proceedings at the expense of the applicant.
- I. **Recommendations of Planning Commission.** The Planning Commission shall recommend such actions or conditions relating to the application as deemed necessary or desirable to carry out the intent and purpose of this Ordinance and the Comprehensive Plan. Such recommendation shall be either in the minutes or by written resolution and forwarded to the City Council.
- J. **Record Before City Council.** The Zoning Administrator shall place the report and recommendation of the Planning Commission and the City staff on the agenda for the next regular City Council meeting after Planning Commission action, or the expiration of sixty (60) days after the first consideration by the Commission, whichever is earlier, subject to the limitations of Minnesota Statutes 15.99. Such reports and recommendations shall be entered in and made part of the permanent written record of the City Council meeting.
- K. **City Council Review.** Subject to the limitations of Minnesota Statutes 15.99, the City Council shall act upon an application after it has received the report and recommendation from the Planning Commission. If, upon receiving the reports and recommendations of the Planning Commission and Zoning Administrator, the City Council desires further consideration, or finds that inconsistencies exist in the review process, data submitted or recommended action, the City Council

may, before taking final action, refer the matter back to the Planning Commission with a statement detailing the reasons for referral.

L. City Council Action.

1. Approval of a proposed amendment shall require a majority vote of all members of the City Council. Amendments which change all or part of the existing classification of a zoning district from residential to either commercial or industrial shall require a two-thirds (2/3) (four [4] out of five [5] members of the City Council) majority vote of all members of the City Council.
2. Denial of applications for amendment shall be accompanied by written findings of fact of the City Council, including supporting data setting forth the reasons for the denial in terms of the ways in which the proposed use fails to meet the standards and intent of the Comprehensive Plan and/or this Chapter and is otherwise injurious to the public health, safety and welfare.
3. Approval of an amendment shall be effective upon its date of publication.

M. Approvals Required.

1. Approval of an amendment shall require a majority vote of all members of the City Council. Amendments which change all or part of the existing classification of a zoning district from residential to either commercial or industrial require a three-fifths (3/5) majority vote of all members of the City Council.
2. Approval of a request for conditional use permit, interim use permit, or variance shall require passage by a three-fifths (3/5) vote of all members of the City Council.
3. Approval of a request for site and building plan review shall require passage by a majority vote of the City Council.

N. Notice to Applicant. The Zoning Administrator shall notify the applicant of the decision of the City Council in writing, including any relevant resolution and findings which may have been passed by the City Council.

O. Filing of Notice of Action. A certified copy of any Zoning Ordinance amendment, conditional use permit, interim use permit, or variance authorized shall be filed with the Wright County Recorder.

P. Reconsideration. Whenever an application has been considered and denied by the City Council, a similar application affecting substantially the same property

shall not be considered again by the Planning Commission or City Council before the expiration of six (6) months from the date of its denial and any succeeding denials. However, a decision to reconsider such matter may be made by not less than four-fifths (4/5) vote of all members of the City Council at any time.

1003-4: EXPIRATION OF ZONING APPROVALS:

A. Unless otherwise specified by the City Council at the time it is authorized, a conditional use permit, interim use permit, variance, or site and building plan approvals, shall be null and void and expire if the applicant fails to implement such approvals and fulfill each and every condition attached thereto within one (1) year from the date of its authorization unless a petition for an extension of time in which to implement the approved plans has been granted by the Zoning Administrator provided that:

1. The extension is requested in writing and filed with the City at least thirty (30) days prior to the expiration of the initial conditional use permit request.
2. The request for extension states facts demonstrating that a good faith attempt has been made to complete or utilize the use or activity permitted in the approval.
3. A maximum of one (1) administrative extension shall be granted.
4. The extension shall not exceed ninety (90) days from the initial expiration date.
5. There shall be no charge for the filing of a petition for an administrative extension.

B. Upon receiving a recommendation from the Planning Commission and City staff, the City Council may grant an extension of greater than ninety (90) days provided that:

1. The conditions described in Section 1003-4.A.1-3 above are satisfied.
2. The extension shall not exceed one (1) year from the initial expiration date.
3. The filing of a petition for extension is subject to fee requirements established by City Council resolution.

1003-5: PERFORMANCE AGREEMENT: Upon approval of a conditional use permit, interim use permit, variance, site plan and/or administrative permit, the City may require the applicant to enter into a performance agreement prior to the issuing of

building permits or initiation of work on the proposed improvement or development. Said agreement shall guarantee conformance and compliance with the conditions of the approval and the codes of the City. The performance agreement shall be prepared and approved by the City Attorney and shall contain, but not be limited to, the following items and conditions:

- A. **Performance Security.** The performance agreement shall require the applicant to provide financial security to assure compliance with the agreement and conditions of the approval. The security may be in the form of a surety bond, cash escrow, certificate of deposit, irrevocable letter of credit, securities or cash deposit. The security shall be in an amount determined by the City Engineer or Building Official under the direction of and approved by the Council, to cover estimated costs of labor and materials for the proposed improvements or development. The project can be handled in stages with prior approval of the City.
- B. **Security Release.** The City shall hold the security until completion of the proposed improvements or development and a certificate of occupancy indicating compliance with the application approval and Building Code of the City has been issued by the City Building Official.
- C. **Security Forfeiture.** Failure to comply with the conditions of the application approval and/or the ordinances of the City shall result in forfeiture of the security.
- D. **Hold Harmless and Indemnification of City.** The applicant shall agree to indemnify and hold harmless the City and its agents and employees against any and all claims, demands, losses, damages and expenses (including attorney fees) arising out of or resulting from the applicant's negligent or intentional acts, violation of any safety law, and regulation or any code in the performance of this agreement, without regard to any inspection or review made or not made by the City, its agents or employees or failure to take any other prudent precaution. In the event any City employee, agent or representative shall come under the direct or indirect control of the applicant, or the City, upon failure of the applicant to comply with any conditions of the approval, performs said conditions pursuant to the bond, the applicant shall indemnify and hold harmless the City, its employees, agents and representatives for its own negligent or intentional acts in the performance of the applicant's required work under the permit.
- E. **Fees.** The applicant shall agree to pay any and all attorney and consultant fees incurred by the City to enforce the terms and conditions of any application approval or provisions of any performance agreement relating to said permits.

1003-6: APPEALS FROM ADMINISTRATIVE ACTION: The City Council, serving as the Board of Appeals and Adjustments, shall, after receiving the written report of the Zoning Administrator, make findings of fact and make a decision on appeals where it is alleged by the appellant that error has occurred in any order, interpretation requirement, decision or determination made by any administrative office or the Zoning Administrator in the enforcement of this Ordinance. However, said appeal shall be filed not later than sixty (60) days after the applicant has received a written order from the City or the appeal shall be void.

1003-7: COST RECOVERY:

- A. **Purpose.** The costs of the City for receiving, analyzing, processing, hearing and final process for requests of changes, modification, or special consideration under this Ordinance, such as requests for rezoning (map or text), conditional use permits, interim use permits, and variances are considered to be unique to the applicant requesting such consideration, and it is the intent of this section to provide that all costs of the City occasioned by such requests shall be borne by the applicant. The reimbursement to the City shall be limited to actual costs of the City. Actual costs shall include all engineering, legal, planning, or other consultant fees or costs paid by the City for other consultants for expert review of a development application.
- B. **Base Zoning Fee.** Each applicant shall pay a non-refundable base zoning fee at the time an application is presented to the City for a zoning change of any nature, site and building plan review, a conditional use, or a variance. This fee is intended to reimburse the City for its costs for administrative processing a development application. If this fee proves to be insufficient to cover such costs, such additional costs will be charged as a part of the zoning deposit, or the supplemental zoning deposit.
- C. **Escrow Deposit.** In addition to the non-refundable basic zoning fee, each applicant shall pay an escrow deposit in an amount established by City Council resolution at the time of application. All actual costs including, but not limited to, planning, engineering, legal, or other consultant fees or costs, incurred by the City in the processing of the application shall be paid from or reimbursed to the City, from the escrow deposit. Actual costs not fully paid or reimbursed from the base zoning fee shall be paid or reimbursed from this escrow or supplemental deposit.
- D. **Supplemental Deposit.** At any time while the application is pending and before its final conclusion, if the Zoning Administrator determines that the amount of the escrow deposit required by Section 1003-7.C of this Ordinance is or is estimated to be insufficient to pay for present or anticipated actual costs of the application, a supplementary deposit shall be required by the Zoning Administrator to be paid

by the applicant. The one (1) or more supplemental deposits shall be in an amount sufficient to pay all actual costs of the City.

- E. **Refunds – Administrative Costs.** The base zoning fee, intended to cover administrative costs, is non-refundable.
- F. **Refunds – Direct Costs.** If the direct costs of the City in processing the application are less than the amount of the escrow deposit and any supplemental deposit, any such coverage shall be refunded to the applicant upon the conclusion of the proceedings, and any such costs in excess of the supplemental deposits on hand with the City shall be paid by the applicant prior to completion of the proceedings by the City.

1003-8: CERTIFICATION OF TAXES PAID: Prior to approving an application for amendment, conditional use permit, interim use permit, variance, or administrative permit, the applicant shall provide certification to the City that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the application relates.

1003-9: ENFORCEMENT: This Ordinance shall be administered and enforced by the Zoning Administrator. The Zoning Administrator may institute in the name of the City of Montrose any appropriate actions or proceedings against a violator. Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the causes and basis thereof and shall be filed with the Zoning Administrator. That person shall record properly such complaint, immediately investigate, and take action thereon as provided by this Ordinance.

- A. **Enforcement Procedure:** For the enforcement of the provisions of the Zoning Ordinance, the first zoning violation notice shall be sent by regular mail, and the second notice will be sent by certified mail or return receipt requested to the property owner of which the violation is taking place. A copy of the zoning violation notice shall be sent to the City Council, Planning Commission, Police Chief, and City Attorney. The zoning violation notice shall contain the following information:
 - 1. A description of the violation which is taking place.
 - 2. A picture (if possible) of the violation which is taking place.
 - 3. Location and/or address of the property at which the violation is taking place.

4. Identification of the section of the Zoning Ordinance which is being violated.
 5. Date the violation was discovered.
 6. Steps necessary to correct the violation.
 7. Deadline in which the violation must be corrected, which is at the discretion of the Zoning Administrator, but which in no case may be longer than thirty (30) days from the date the first notice is mailed.
- B. **Correction of the Zoning Violation:** Correction of the violation in the manner stipulated by the zoning notice violation, at any point during this enforcement process, shall deem the zoning violation notice null and void, and enforcement activity shall cease.
- C. **Failure to Correct Zoning Violation – Enforcement Remedies:** Failure to correct the zoning violation shall result in the City pursuing enforcement action following notification to the property owner, with the City having the authority to carry out the following enforcement remedies:
1. **Withhold Permits:** The City shall have the authority to withhold any permits or City approvals which are necessary until the violation is corrected to the City's satisfaction.
 2. **Stop Work Order:** The City shall have the authority to issue a stop work order on the subject violation.
 3. **Abatement:** The City shall have the authority to require that the violation be abated by completely removing or stopping the item or use which has been identified in the zoning violation notice.
 4. **Injunctive Relief:** The City shall have the authority to seek an injunction in court to stop any violation of this Ordinance.
 5. **Civic Remedies:** The City shall have the authority to institute appropriate civil action to enforce the provisions of this Ordinance, and shall recover reasonable court costs and attorney's fees which are incurred due to the enforcement of the subject violation, at the discretion of the court.
 6. **Assessment:** The City shall have the authority to use the provisions of Minnesota State Statutes 429, assess any charge against the property benefited, and any such assessment shall, at the time at which taxes are certified to the County Auditor, be certified for collection in the manner that other special assessments are so certified.

7. **Criminal Remedies:** The City shall have the authority to institute appropriate misdemeanor criminal action for a violation of this Ordinance. Upon conviction, a fine of not less than two hundred dollars (\$200.00) shall be imposed for each day or part of a day that the violation occurs, starting ten (10) days from the date the Zoning Administrator placed in the custody of the U.S. Postal Service, the zoning violation notice, certified or return receipt requested. It shall be unlawful to violate a provision of this Ordinance.

8. **Cumulative Remedies:** The powers and remedies of this section shall not be individually limited and are not exclusive. The powers and remedies of this section are cumulative and all power and remedies may apply, as well as any other remedies allowed under State law.