

# PRELIMINARY DRAFT ZONING ORDINANCE FOR PUBLIC FORUM TUESDAY, JUNE 13, 2023

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### **Enforcement**

The provisions of this Ordinance shall be administered and enforced by the Zoning Administrator or his or her designee.

### **Zoning Administrator Duties**

The Zoning Administrator shall have responsibility for carrying-out the provisions of this Ordinance and shall have the power to grant certificates of zoning compliance and to make inspections of premises necessary to carry out his/her duties in the enforcement of this Ordinance, and to otherwise carry out the duties assigned herein. The Zoning Administrator shall be responsible for maintaining the Official Zoning Map. The Zoning Administrator shall order discontinuance of illegal uses of land, buildings, or structures; removal of illegal buildings or structures; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or prevent violations of its provisions.

### **Site Plan and Site Plan Application – Review and Approval**

Site plan review and approval shall be required prior to the issuance of a building permit for the construction, reconstruction, erection, expansion, or relocation of any building or structure in any zoning district, and prior to the initiation of any special land use in any zoning district, and prior to the initiation of any new use of land not requiring a building permit, subject to the provisions of this Ordinance. The site plan, accompanying site plan application, and other materials provided as part of the site plan review and approval process shall be approved by the Zoning Administrator, Planning Commission, or City Council as required by this Ordinance.

### **Zoning Ordinance and Zoning Map Amendments**

Applications for amendments to the Zoning Ordinance shall be processed as follows:

**Timeframe for Application Submittal** - All applications for amendments to the Zoning Ordinance shall be submitted to the Zoning Administrator at least thirty (30) days prior to the first consideration by the City Planning Commission.

**Initiation of Amendments and Application Requirements** - Requests for amendments to the Zoning Ordinance may be initiated in writing by the owner of the property requested for rezoning, or his/her authorized representative. Requests may also be made by the City Planning Commission or the City Council through official action of the Commission or Council taken at a public meeting which has been properly noticed as required by law. In the case of an amendment requested by a property owner or his/her authorized representative, the request shall include the following:

**Zoning Amendment Application** - Completion of a Zoning Amendment Application as provided by the Zoning Administrator. The application shall include:

**Ownership Interest** - The name and address of the person making the request and all persons having a legal or equitable interest in any land which is requested to be rezoned.

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**Text Amendment** - In the case of a text amendment, the specific section to be amended and the proposed text change.

**Change in the Zoning Map and Boundary Survey** - If the requested amendment requires a change in the zoning map, the common address, legal description, and property identification number (as assigned by Wexford County) of the area requested for change, and present and proposed district classifications shall be provided. The applicant shall also indicate by map form, the location of the property requested for rezoning. If, in the opinion of the Zoning Administrator, Planning Commission, or City Council, the information submitted does not provide a clear delineation of the specific area to be rezoned, the Zoning Administrator, Planning Commission, or City Council shall require the applicant to submit a boundary survey of the property in question. The survey shall include a written legal description and drawing of the area to be rezoned. The boundary survey, including legal description and map, shall be completed by a Land Surveyor registered by the State of Michigan. Twelve (12) copies of the boundary survey shall be provided. In the event an applicant provides a digital PDF of the boundary survey and other written and graphic instruments, the number of paper or hard copies may be reduced to one (1) copy.

**Proposed Amendment** - The nature of the text or map amendment shall be fully identified in writing.

**Fee** - Payment of all fees as required by the city of Cadillac.

**Amendment Procedure** - After submission of the application and fee, amendments to this Ordinance shall be processed as provided for in the Zoning Act.

**Consideration of Amendment** - The following guidelines shall be used by the Planning Commission and City Council pursuant to consideration of amendments to the Zoning Ordinance:

**Text Amendment** – Zoning text amendments shall:

**Master Plan Consistency** - As applicable, the amendment shall be consistent with the City Master Plan.

**Addition of a Use to a Zone District** - In the event the amendment will add a use to a district, this use shall be fully consistent with the character of the range of uses provided for within the district.

**Compatibility** - The amendment shall not result in problems of incompatibility among land uses within a zoning district, or among adjacent districts.

**Provision of Public Facilities and Services** - As applicable, the proposed change shall be consistent with the city's ability to provide adequate public facilities and services. The existing or planned infrastructure including streets, sanitary sewers, storm sewer, sidewalks, and street lighting shall have sufficient capacity to support those uses provided for within the proposed zoning district

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classification. Existing city facilities and services including, but not limited to, police and fire protection, recreational facilities, educational facilities, and waste collection shall have sufficient capacity to support those uses provided for within the proposed zoning district classification.

**Public Health, Safety, and Welfare** - The proposed change shall be consistent with the public health, safety, and welfare.

**Zoning Map Amendment** – Amendments to the City Zoning Map shall:

**Master Plan Consistency** - As applicable, the amendment shall be consistent with the City Master Plan.

**Area Character Consistency** - The range of uses permitted by the proposed change shall be consistent with the character of the area.

**Provision of Public Facilities and Services** - As applicable, the proposed change shall be consistent with the city's ability to provide adequate public facilities and services. The existing or planned infrastructure including streets, sanitary sewers, storm sewer, sidewalks, and street lighting shall have sufficient capacity to support those uses provided for within the proposed zoning district classification. Existing city facilities and services including, but not limited to, police and fire protection, recreational facilities, educational facilities, and waste collection shall have sufficient capacity to support those uses provided for within the proposed zoning district classification.

**Economic Impact** - The proposed change shall not result in the economic decline of adjoining property values.

**Avoidance of Compatibility Conflicts** - The proposed change shall be governed by sufficient standards to ensure that the potential for problems of incompatibility between the proposed and adjoining districts shall be minimal.

**Public Health, Safety, and Welfare** - The proposed change shall not endanger the public health, safety, and welfare.

### **Conditional Rezoning**

It is recognized that there are certain instances where it would be in the best interests of the city, as well as advantageous to property owners seeking a change in zoning boundaries, if specific conditions could be proposed by property owners as part of a request for a rezoning. It is the intent of this Section to provide a process consistent with the provisions of Section 405 of the Michigan Zoning Enabling Act (MCL125.3405) by which an owner seeking a rezoning may voluntarily propose conditions regarding the use and/or development of land as part of the rezoning request. A request for conditional rezoning shall:

**Application and Offer of Conditions** - An owner of land may voluntarily offer in writing conditions relating to the use and/or development of land for which a rezoning is requested. This offer may be made either at the time the application for rezoning is filed or may be made at a later time

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during the rezoning process. The required application and process for considering a rezoning request with conditions shall be the same as that for considering rezoning requests made without any offer of conditions, except as modified by the requirements of this Section. The owner's offer of conditions:

**Uses** - May not purport to authorize uses or developments not permitted in the requested new zoning district.

**Relationship** - Shall bear a reasonable and rational relationship to the property for which rezoning is requested. Any use or development proposed as part of an offer of conditions that would require a special land use permit under the terms of this Ordinance may only be commenced if a special land use permit for the use or development is ultimately granted in accordance with the provisions of this Ordinance.

**Variances** - Any use or development proposed as part of an offer of conditions that would require a variance under the terms of this Ordinance may only be commenced if a variance for the development is ultimately granted by the Zoning Board of Appeals in accordance with the provisions of this Ordinance.

**Site Plan Approval** - Any use or development proposed as part of an offer of conditions that would require site plan approval under the terms of this Ordinance may only be commenced if site plan approval for the use or development is ultimately granted in accordance with the provisions of this Ordinance.

**Amending Conditions** - The offer of conditions may be amended during the process of rezoning consideration provided that any amended or additional conditions are entered voluntarily by the owner. An owner may withdraw all or part of its offer of conditions any time prior to final rezoning action of the City Council provided that, if the withdrawal occurs subsequent to the Planning Commission's public hearing on the original rezoning request, then the rezoning application shall be referred to the Planning Commission for a new public hearing, with appropriate notice and a new recommendation.

**Planning Commission Review** - The Planning Commission, after public hearing in accordance with the Zoning Act and consideration of the factors for rezoning, may recommend approval or denial of the rezoning. The Planning Commission's deliberations shall include, but not be limited to, a consideration of the factors for rezoning set forth in this Ordinance. Should the recommendation be for denial, the Planning Commission may informally communicate to the applicant any conditions that may be considered necessary for the Planning Commission to recommend approval; however, this communication shall not be considered tacit approval. Any changes to the offer of conditions must be acceptable to and voluntarily offered by the owner.

**City Council Review** - After receipt of the Planning Commission's recommendation, the City Council shall deliberate upon the requested rezoning and may approve or deny the conditional rezoning request. The City Council's deliberations shall include, but not be limited to, a consideration of the factors for rezoning set forth in this Ordinance. Should the City Council consider amendments to the

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proposed conditional rezoning that have been offered by the owner but were not part of the offer of conditions as recommended by the Planning Commission, then the City Council shall refer the amendments to the Planning Commission for a report and recommendation thereon within a time specified by the City Council and proceed thereafter in accordance with the Zoning Act to deny or approve the conditional rezoning with or without amendments.

The City Council may, at its own discretion, determine that the amendments are different enough from those considered by the Planning Commission at the public hearing so that a new public hearing before the Planning Commission shall be required, followed by a new recommendation. If the City Council finds the rezoning request and offer of conditions acceptable, the offered conditions shall be incorporated into a formal written Statement of Conditions acceptable to the owner and conforming to the provisions of this Section. The Statement of Conditions shall:

**Ordinance Attachment** - Be incorporated by attachment to the Ordinance adopted by the City Council to accomplish the requested rezoning.

**Recordation** - Be in a form recordable with the Register of Deeds of Wexford County or, in the alternative, be accompanied by a recordable Affidavit or Memorandum prepared and signed by the owner giving notice of the Statement of Conditions in a manner acceptable to the City Council.

**Legal Description** - Contain a legal description of the land to which it pertains.

**Continuation of Conditions** - Contain a statement acknowledging that the Statement of Conditions runs with the land and is binding upon successor owners of the land.

**Plans and Illustrations** - Incorporate by attachment or reference any diagram, plans or other documents submitted or approved by the owner that are necessary to illustrate the implementation of the Statement of Conditions. If any documents are incorporated by reference, the reference shall specify where the document may be examined.

**Statement of Conditions** - Contain a statement acknowledging that the Statement of Conditions or an Affidavit or Memorandum giving notice thereof may be recorded by the city with the Register of Deeds of Wexford County.

**Signatures** - Contain the notarized signatures of all of the owners of the subject land preceded by a statement attesting to the fact that they voluntarily offer and consent to the provisions contained within the Statement of Conditions.

**Amendment of the Zoning Map** - Upon the rezoning taking effect, the Zoning Map shall be amended to reflect the new zoning classification along with a designation that the land was rezoned with a Statement of Conditions. The City Clerk shall maintain a listing of all lands rezoned with a Statement of Conditions.

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**Administration and Enforcement** - The approved Statement of Conditions or an Affidavit or Memorandum giving notice thereof shall be filed by the city with the Register of Deeds of Wexford County. The City Council shall have authority to waive this requirement if it determines that, given the nature of the conditions and/or the time frame within which the conditions are to be satisfied, the recording of such a document would be of no material benefit to the city or to any subsequent owner of the land. Upon the rezoning taking effect, the use of the land so rezoned shall conform thereafter to all the requirements regulating use and development within the new zoning district as modified by any more restrictive provisions contained in the Statement of Conditions.

**Compliance with Conditions** - Any person who establishes a development or commences a use upon land that has been rezoned with conditions shall continuously operate and maintain the development or use in compliance with all of the conditions set forth in the Statement of Conditions. Any failure to comply with a condition contained within the Statement of Conditions shall constitute a violation of this Zoning Ordinance and be punishable accordingly. Additionally, any violation shall be deemed a nuisance per se and subject to judicial abatement as provided by law. No permit or approval shall be granted under this Ordinance for any use or development that is contrary to an applicable Statement of Conditions.

**Time Period for Establishing Development or Use** - Unless another time period is specified in the Ordinance rezoning the subject land, the approved development and/or use of the land pursuant to building and other required permits must be commenced upon the land within 18 months after the rezoning took effect and thereafter proceed diligently to completion. This time limitation may upon written request be extended by the City Council if both of the following apply: 1) It is demonstrated to the City Council's reasonable satisfaction that there is a strong likelihood that the development and/or use will commence within the period of extension and proceed diligently thereafter to completion; and, 2) The City Council finds that there has not been a change in circumstances that would render the current zoning with Statement of Conditions incompatible with other zones and uses in the surrounding area or otherwise inconsistent with sound zoning policy.

**Reversion of Zoning** - If the approved development and/or use of the rezoned land does not occur within the time frame specified above, then the land shall revert to its former zoning classification. The reversion process shall be initiated by the City Council requesting that the Planning Commission proceed with consideration of rezoning of the land to its former zoning classification. The procedure for considering and making this reversionary rezoning shall thereafter be the same as applies to all other rezoning requests.

**Subsequent Rezoning of Land** - When land that is rezoned with a Statement of Conditions is thereafter rezoned to a different zoning classification or to the same zoning classification but with a different or no Statement of Conditions, whether as a result of a reversion of zoning or otherwise, the Statement of Conditions imposed under the former zoning classification shall cease to be in effect. Upon the owner's written request, the City Clerk shall record with the Register of Deeds of Wexford County a notice that the Statement of Conditions is no longer in effect.



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**Amendment of Conditions** - During the time period for commencement of an approved development or use specified pursuant to the above or during any extension thereof granted by the City Council, the city shall not add to or alter the conditions in the Statement of Conditions. The Statement of Conditions may be amended thereafter in the same manner as was prescribed for the original rezoning and Statement of Conditions.

**City Right to Rezone** - Nothing in the Statement of Conditions nor in the provisions of this Section shall be deemed to prohibit the city from rezoning all or any portion of land that is subject to a Statement of Conditions to another zoning classification. Any rezoning shall be conducted in compliance with this Ordinance and the Michigan Zoning Enabling Act.

**Failure to Offer Conditions** - The city shall not require an owner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect an owner's rights under this Ordinance.

### **Performance Guarantees**

As a condition of approval of a site plan, special land use, planned unit development, variance, or other zoning action, the Zoning Administrator, Planning Commission, City Council, or Zoning Board of Appeals, as appropriate, may require a bond or other financial guarantee of sufficient sum to assure the installation of those features or components of the approved activity or construction which are considered necessary to protect the health, safety and welfare of the public and of users or inhabitants of the proposed development. Such features or components, hereafter referred to as improvements, may include but shall not be limited to roadways, curbs, landscaping, fences, walls, screens, lighting, drainage facilities, sidewalks, utilities, and similar items. Performance guarantees shall be processed in the following manner:

**Cost Estimate** - The applicant shall prepare an itemized cost estimate of the required improvements, which shall then be reviewed and approved by the Zoning Administrator. The amount of the performance guarantee shall be one hundred (100) percent of the following costs: a. Purchase and/or construction of improvements. b. Installation of improvements. c. Architectural and/or engineering design or related professional costs. d. Reasonable amount for contingencies, but in no case less than five (5) percent of total costs for the above.

**Form of the Performance Guarantee** - The required performance guarantee shall be in the form of an irrevocable bank letter of credit, surety bond, or other form of guarantee acceptable to the party requiring the guarantee.

**Permit Issuance** - Upon receipt of the required performance guarantee, the Zoning Administrator shall issue a certificate of zoning compliance for the subject development or activity.

**Rebating of the Performance Guarantee** - The Zoning Administrator, upon the written request of the applicant, shall rebate portions of the performance guarantee upon determination that the improvements for which the rebate has been requested have been satisfactorily completed. The portion

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of the performance guarantee to be rebated shall be in the same amount as stated in the itemized cost estimate for the applicable improvement.

**Completion of Improvements** - When all of the required improvements have been completed, the applicant shall send written notice to the Zoning Administrator of completion of all improvements. Thereupon, the Zoning Administrator shall inspect all of the improvements and shall recommend to the Planning Commission, City Council, or Zoning Board of Appeals, as appropriate, approval, partial approval, or rejection of the improvements with a statement of the reasons for any rejections. The Planning Commission, City Council, or Zoning Board of Appeals, as appropriate, shall either approve, partially approve, or reject the improvements. The Zoning Administrator shall notify the applicant in writing of the action of the Planning Commission, City Council, or Zoning Board of Appeals, as appropriate, within thirty (30) days after the official action of the Commission, Council, or Zoning Board of Appeals. Where partial approval is granted, the applicant shall be released from liability pursuant to relevant portions of the performance guarantee, except for that portion sufficient to secure completion of the improvements not yet approved.

**Record of Authorized Performance Guarantees** - A record of authorized performance guarantees shall be maintained by the Cadillac City Treasurer.

#### **Recordation**

After final city approval, the city may record with the Wexford County Register of Deeds approved site plans and other similar instruments that include more than one (1) platted lot, planned unit developments, and other zoning actions and approvals as determined necessary and appropriate. The recording fee shall be borne by the applicant who shall remit same prior to receipt of a Permit for Zoning Compliance. This provision shall not be construed to replace any recording requirement mandated by other statutes, ordinances, or regulations.

#### **Violations**

Any building or structure moved, erected, razed, converted, or used and any use of land or premises which is carried on in violation of this Ordinance is declared to be a nuisance per se. All buildings, structures, and land uses considered to be in violation of this Ordinance shall be reported to the Zoning Administrator.

**Administration of Ordinance Violations** - After a written order to correct the violation has been issued by the Zoning Administrator, the following shall apply:

**Timeframe for the Correction of an Ordinance Violation and Request for an Extension of the Correction of the Violation** - The property owner (owner of the property upon which the violation is located) shall have seven (7) days to correct the violation. If the violation cannot be corrected within seven (7) days the Zoning Administrator may, with just cause, extend the correction period for an appropriate amount of time up to a period of six (6) months. The approved extension period shall be at the discretion of the Zoning Administrator. In the event a longer period is required, the following shall apply:

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**Extension by the Zoning Board of Appeals** - Upon petition, the Zoning Board of Appeals may grant up to six (6) additional months to correct the violation if conditions warrant an extended period of time. The six (6) month period shall commence at the end of the extended period as approved by the Zoning Administrator (as referenced above).

**Special Land Use and Planned Unit Development Extensions** - If the violation involves a special land use or planned unit development, the request for the extended period of time shall be made to and approved by the party having final approval authority for special land uses and planned unit developments.

**Applicant Responsible for Extension Request** - In all cases, a request for extending the period of time for correcting a violation shall be made, in writing, by the applicant.

**Imminent Threat** - In the event the Zoning Administrator determines that an Ordinance violation poses an imminent threat to the health, safety, and welfare of the occupants of the premises on which the violation is located or to the general public, the Zoning Administrator may require that immediate measure be taken to correct the violation.

**Violations of the Zoning Ordinance are Civil Infractions** – Any person, firm, corporation, or organization who violates, disobeys, omits, or refuses to comply with any provisions of this Ordinance or lawful order of the Zoning Administrator, Planning Commission, Zoning Board of Appeals, or City Council issued in pursuance of this Ordinance shall be responsible for a civil infraction punishable by the sanctions set forth by the City of Cadillac. Each day which a violation continues, may be deemed a separate infraction. The sanction for any violation of this Ordinance which is a municipal civil infraction shall be a civil fine as provided herein, plus any costs, damages, expenses, and other sanctions authorized under Act 12 through 26, Public Acts of Michigan of 1994.