

Memorandum

To: Frankfort Planning Commission

Cc: Josh Mills, City Superintendent

From: Chip Smith, AICP

Date: January 8, 2014

RE: Amendments to the Frankfort Zoning Ordinance

Based on the direction we received, we have made 25 modifications/amendments and additions to the City's Zoning Ordinance for your further consideration.

Proposed changes are described below and on the following pages.

1. Increased the allowable roof pitch for principal buildings in the Rural, North City, East City and West City Districts. This involved the following changes:
 - a) 8203.08 #10, line 2, change "maximum of ten (10) feet of rise" to maximum to fourteen (14) feet of rise".
 - b) 8302 Rural, Figure 1, change roof pitch on Principal Building diagram from "10:12 max" to "14:12 max"
 - c) 8303 East City Residential, Figure 2, change roof pitch on Principal Building diagram from "10:12 max" to "14:12 max"
 - d) 8304 North City Residential, Figure 3, change roof pitch on Principal Building diagram from "10:12 max" to "14:12 max"
 - e) 8305 West City Residential, Figure 4, change roof pitch on Principal Building diagram from "10:12 max" to "14:12 max"

2. Reduce the minimum principal building height from 30 ft. to 18 ft. in the North City Residential District. This involved the following changes:
 - a) 8304 North City Residential, Table, item b: Building Height, change Principal Building Height from "30' min" to "18' min"
 - b) 8304 North City Residential, Figure 3, change minimum height on Principal Building diagram from "30' Min." to "18' Min"
 - c) 8302 Rural, Table, item b Building Height, for Principal Building, insert "18 ft. min"
 - d) 8302 Rural, Figure 1, for Principal Building diagram, insert "18' min." after "40' min."

- 3. Redefine maximum height for garages and accessory structures. These changes are as follows:**
- a) 8203.13 #3a Detached Garages, last line, change “twenty-four (24) feet” to Principal Building minus two (2) feet and not to exceed 2 stories”.
 - b) 8301.04 Summary Table, row H, Ancillary Building (maximum) be changed as follows:
 - i) In Rural column, change “24’ for all other uses” to Principal Building Height minus 2’ and may not exceed 2 stories”
 - ii) In North City, East City and West City columns, change “24’” to Principal Building Height minus 2’ and may not exceed 2 stories”
 - c) 8302.Rural, Table, item b Outbuilding, change “40ft.max” to “40ft max for Agricultural Purposes only; for other outbuildings, maximum height is Principal Building Height minus 2’ and not to exceed 2 stories”.
 - d) 8302. Rural, Figure 1, update diagram to show Outbuildings other than Agricultural Purposes with Maximum of Principal Building Height minus 2’ and not to exceed 2 stories”
 - e) 8303 East City, Table, item b Outbuilding, change “24ft max” to Principal Building Height minus 2’ and not to exceed 2 stories”
 - f) 8303 East City, Figure 2, change Outbuilding diagram “24’ max” to “maximum height is Principal Building Height minus 2’ and not to exceed 2 stories.”
 - g) 8304 North City, Table, item b Outbuilding, change “24ft max” to Principal Building Height minus 2’ and not to exceed 2 stories”
 - h) 8304 North City, Figure 3, change Outbuilding diagram “24’ max” to “maximum height is Principal Building Height minus 2’ and not to exceed 2 stories.”
 - i) 8305 West City, Table, item b Outbuilding, change “24ft max” to Principal Building Height minus 2’ and not to exceed 2 stories”
 - j) 8305 East City, Figure 4, change Outbuilding diagram “24’ max” to “maximum height is Principal Building Height minus 2’ and not to exceed 2 stories.”
- 4. Modify the minimum floor area requirements (FAR) in the Rural and North City Districts. This modification requires the following change:**
- a) 8203.12 Floor Area #1 One-Story Single Family Dwellings: Suggest that 1st sentence of this paragraph be replaced with the following:

“For each new one-story single family dwelling erected in East and West City Residential Districts, including mobile homes erected outside of mobile home parks, there shall a minimum ground floor area of one thousand (1,000) square feet. For each new one-story single family dwelling erected in North City Residential and Rural Districts, including mobile homes erected outside of mobile home parks, there shall a minimum ground floor area of 680 square feet exclusive of porches, decks and steps.”
- 5. Re-define the maximum habitable area of ancillary living space in the Rural, East City, North City and West City Residential Districts. This new definition requires the following change:**
- a) 8205.09 Building Configuration #2a. “The habitable area of an Ancillary living space within a Principal Building or an Outbuilding shall not exceed 440 square feet, excluding the parking area” be re-worded “The maximum habitable area of an Ancillary Living Space, if above a detached garage, is 60% of the ground floor area of the Primary Dwelling; and, if above or within an Accessory Structure, 50% of the ground floor area of the Primary Dwelling.”

6. Amend Section 8203.02 – Accessory Buildings for the purpose of increasing the maximum number of accessory buildings in the East City, North City, West City Residential and Rural Districts. The Amended Section now reads as follows:

8203.02 Accessory Buildings

General regulations: In any zoning district, an accessory building may be erected, detached from the permitted principal building or as an integral part of the permitted principal building. When erected as an integral part of the permitted principal building, it shall comply in all respects with the requirements of this Ordinance applicable to the permitted principal building. The architectural character of all accessory buildings shall be compatible and similar to the principal building.

1. Detached accessory buildings, whether the foundation is permanent or non-permanent, shall be located as indicated in district regulations.
2. Attached accessory buildings shall be located as indicated in district regulations. No accessory building may be built on any lot on which there is no principal building. No portion of an accessory building shall be utilized as a dwelling or as sleeping quarters.
3. In North City, East City and West City Residential, the maximum number of Accessory Buildings on any one improved lot shall be three (2), of which a Garage, whether attached or detached, counts as one (1). Only one (1) Accessory Building may contain Ancillary Living Space.
4. In the Rural District, the maximum number of Accessory Buildings on any one improved lot shall be four (4), of which a Garage, whether Attached or Detached, counts as one (1).
 - a. Only one (1) Accessory Structure, which may not be an Agricultural Building, may contain Ancillary Living Space.
 - b. The 40ft height limit applies to only one (1) of these four (4) Accessory Buildings, and that building may be used only for Agricultural purposes and may not be used as Ancillary Living Space. A structure is deemed “Agricultural” by virtue of its additional height and not by definition of its contents which may include, but be not limited to: agricultural equipment, feed and supplies associated with permitted Urban Agricultural activity and with permitted Greenhouse activity.
 - c. The lot coverage allowance shall not be exceeded.
 - d. Stormwater and Steep Slope requirements must be observed.
 - e. An Agricultural Building on any one improved lot subtracts one (a) from the maximum number of Accessory Buildings.
5. Accessory buildings are prohibited in a front yard or in either of the front yards on a corner lot.
6. Where permitted, accessory buildings shall be subject to district placement, size and setback requirements.
7. No accessory building in any district shall be larger than 50% of the principal building.

In those cases where the Administrator questions whether an accessory building is usual and customary to a permitted use, a determination shall be made by the Planning Commission utilizing the following criteria, and the procedure for calling a hearing for a special use shall be followed.

1. Whether the proposed building is consistent with the permitted use.

2. Whether the proposed size and location of the proposed building is consistent with existing permitted uses.
3. Whether the proposed building will affect the light and air circulation of any adjoining buildings or properties.
4. Whether the proposed building will adversely affect the view of any adjoining property.
5. Whether the proposed building can be located such that it meets the yard and other requirements.

This amendment also requires the following changes:

- a. Amend 8303 East City, Table, to include the following Note: Accessory/Ancillary structures shall be limited to three (3) structures, of which a garage (whether attached or detached) counts as 1.
 - b. Amend 8304 North City, Table, to include the following Note: Accessory/Ancillary structures shall be limited to three (3) structures, of which a garage (whether attached or detached) counts as 1.
 - c. Amend 8305 West City, Table, to include the following Note: Accessory/Ancillary structures shall be limited to three (3) structures, of which a garage (whether attached or detached) counts as 1.
 - d. Amend 8302 Rural District, Table, to include the following Note: Accessory/Ancillary structures shall be limited to four (4), structures, of which a garage (whether attached or detached) counts as 1.
7. Amend Rural District Building Configuration sketch to show side and rear yard 15 ft. minimum setback requirements for accessory structures and add a not restricting accessory structures to the third layer.
 8. Amend Rural District Building Configuration sketch to add a note stating” of “Minimum Setback distances for Accessory Building location are increased proportionally as the height of the Accessory Building increases in a proportion of one (1) additional foot of side-yard and back-lot line for each two (2) feet of building.
 9. Create new Section 8203.33 Medical Marihuana Caregiver Facility using language from the City’s adopted ordinance.
 10. Amend Section 8106.01 to create subsection 6 that reads:

“6. To obtain a "Medical Marihuana Primary Caregiver Facility" permit the applicant meets all standards for an enclosed, locked storage location as stated in the Initiated Act 1 of 2008, the Michigan Medical Marihuana Act (MMMA), as amended, and any regulations published by the State of Michigan, then the City may issue permits for Medical Marihuana Primary Caregiver Facility based on the standards and application requirement of Section 8107 Site Development Plan Review, subsection 8107.03.”

11. Amend Section 8106 to create new subsection 8106.03b that reads as follows:

8106.03b Revocation of Occupancy Permit for a Medical Marihuana Patient, Caregiver, or Caregiver Facility.

Revocation shall occur, by the Administrator, for violation of City of Frankfort Zoning Ordinances, when:

- a. The State of Michigan cancels or does not renew the Medical Marihuana Patient or Caregiver REGISTRATION IDENTIFICATION CARD
- b. A Medical Marihuana Patient or Primary Caregiver does not present the required documents to provide proof of initial and all subsequent renewals of the Medical Marihuana Caregiver REGISTRATION IDENTIFICATION CARD issued by the State of Michigan within ten (10) business days of each renewal.
- c. The Administrator, based on evidence discovered or provided at any time, and with prejudice and immediately, when the number of qualifying patients exceeds the MMMA limitations on the number of registered patients plus the Caregiver, if he/she is registered qualified patient at any one location.

12. Amend Section 8107.01 to create a new subsection 8105.01(5) that reads as follows:

Medical Marihuana Caregiver Facility

The Facility is in compliance with and subject to all regulations found in the Michigan Medical Marihuana Act (MMMA), as amended, in addition to the review standards of existing Section(s) 8107.02 through 8107.10.

13. Amend Section 8107.03 to add new subsection 8107.03(8) to read as follows:

A Completed Application for Medical Marihuana Caregiver Facility based on the specific Standards, including the requirements for compliance with the indoor and/or outdoor enclosed, locked facility standards as defined in the Initiated Act 1 of 2008, MMMA, as amended that when completed to the satisfaction of the City Superintendent and Zoning Administrator is the basis for issuing a Land Use Permit.

14. Amend Section 8107.04 to add new subsection 5 to read as follows:

- 5. Standards for Review for Medical Marihuana Caregiver Facility
The Zoning Administrator in accordance with the following requirements shall evaluate an application for a Medical Marihuana Primary Caregiver based on the

current regulations and public laws of the State of Michigan, specifically the Initiated Act 1 of 2008, the Michigan Medical Marihuana Act (MMMA), as amended, and the regulations published by the State of Michigan that the facility meets all the requirements of an enclosed, locked facility. The zoning administrator shall determine that the following conditions are met by the application:

a. Combined Operations Prohibited. No more than one Medical Marihuana Primary Caregiver shall occupy or otherwise operate in any one growing facility. Within any one Medical Marihuana Primary Caregiver Facility, there shall be no combination of growing or storage activities that would result in possession at any time of marihuana and/or marihuana plants in excess of the amounts allowed in the enabling act.

b. Isolation Distance. No Medical Marihuana Primary Caregiver Facility shall be located less than 1,000 feet from any public, private or land use permitted school; and shall not be located within the Federal Mandated "Drug Free School Zone"; and shall not be located less than 300 feet of any other Medical Marihuana Primary Caregiver Facility. For the purposes of these isolation distances, measurements shall be in a straight line from the front porch of the Medical Marihuana Primary Caregiver Facility to the closest property boundary with a school building, or between the front doors of two Medical Marihuana Primary Caregiver Facilities.

c. Prohibited Activities. A Medical Marihuana Primary Caregiver Facility shall not be used as a medical marihuana "dispensary" or "compassion club" and no smoking or otherwise ingesting of medical marihuana shall be permitted on site. A Medical Marihuana Primary Caregiver Facility shall not bear any sign or emblem that would indicate the nature of the activity on site and any advertising it undertakes shall not identify or disclose the location of the Medical Marihuana Primary Caregiver Facility.

d. The proposed use shall conform to all standards of the zoning district in which it is located.

e. The outdoor storage of garbage and refuse shall be contained in locked steel containers, screened from view.

f. Hours of operation shall be limited to 8:00 AM to 10:00 PM.

g. All off-street parking areas shall comply with Section 8205.11 Parking Standards and 8205.12 Parking Location Standards of this Ordinance. All parking

and public areas must be illuminated in accordance with Administrator's approval of the lighting fixtures and light throw distances, during all hours of operation of the facility and until one hour after the business closes.

h. The building entrances and exit shall be handicap accessible to the extent required by the Americans with Disabilities Act.

15. Amend to create Section 8107.11 to read as follows:

8107.11 Additional Application Standards for Medical Marihuana Caregiver Facility

a. Proof that applicant and its employees are Medical Marihuana Primary Caregivers with REGISTRATION IDENTIFICATION CARD from the State of Michigan.

b. An area map, drawn to scale, indicating within a radius of one thousand (1,000) feet from the boundaries of the proposed Medical Marihuana Caregiver Facility site, the proximity of the site to any school; or a three hundred (300) foot direct line distance to any existing Medical Marihuana Caregiver Facility. A Registered Surveyor, licensed by the State of Michigan, shall prepare the map, and its measurements, and the map shall be filed with the Zoning Administrator with the application. Administrative resolution of any disputed isolation distances will be by reference to Section 1 (b) above, and within the existing zoning district where this facility is a permitted use.

c. A Certificate of Occupancy from the Benzie County Building Department verifying the structure and premises are in compliance with all existing building construction, maintenance, building codes and safety regulations. The Certificate of Occupancy is required within 60 days of the land use permit issue date, and is required before the opening or use of the facility for the land use permitted use.

d. A signed release, included with the application form, permitting the City of Frankfort Police Department to perform a criminal background check to ascertain whether the applicant, operator, or any employee named on the application have been convicted of a felony pursuant to the definitions of Michigan Marihuana Act of any person convicted of a felony involving illegal drugs or a felony that is an "assaultive crime" as further defined under MCL 770.9a.

16. Amend Section 8308 Industrial-Entrepreneurial District to add Medical Marihuana Primary Caregiver Facility as a permitted use in compliance with Section 8107.

17. Amend Section 8206.07 (4) to remove requirement that the enclosure be permanently affixed to the ground.
18. Amend Section 8206.07 (4.C) to modify the placement requirements for chicken and rabbit enclosures.
19. Add new Section 8207: Renewable and Alternative Energy. (language attached for review)
20. Amend Section 8308: Industrial-Entrepreneurial District to allow mixed-use buildings with a special use permit.
21. Modify Table 12: Zoning District Standards to
 - a) Reduce the Waterfront District setback from the water to 10' if the water's edge is defined by a metal sheetwall.
 - b) Reflect the changes identified in numbers 1,2,3 and 7 above.
22. Modify Table 11: Permitted Uses as follows:
 - a) Under Residential, Allow Mixed Use Building subject to a Special Use Permit in the IE District.
 - b) Under Office, Allow Mixed Use Building subject to a Special Use Permit in the IE District.
 - c) Under Urban Agriculture, allow Animal Kennel/Boarding Facility in the IE District subject to a Special Use Permit.
 - d) Under Industrial, add Technology/Development Facility as a by-right permitted use in the IE District.
23. Add new Section 8313: Planned Development (language attached for review)
24. Definitions. The following new definitions were added:
 - a) Enclosed, locked facility. A closet, room, or other comparable, stationary, and fully enclosed area equipped with secured locks, or other functioning security devices that permit access only a registered primary caregiver or registered qualifying patient. Marihuana plants grown outdoors are considered to be in an enclosed, locked facility if they are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level or from a permanent structure and are grown within a stationary structure that is enclosed on all sides, except for the base, by chain-link fencing, wooden slats, or a similar material that prevents access by the general public and that is anchored, attached, or affixed to the ground; located on land that is owned, leased, or rented by either the registered qualifying patient, or a person designated through the departmental registration process as the primary caregiver for a registered qualifying patient, or patients for whom the marihuana plants are grown; and equipped with functioning locks or other security devices that restrict access to only the registered qualifying patient or the registered primary caregiver who owns, leases, or rents the

property on which the structure is located. Enclosed, locked facility includes a motor vehicle if both of the following conditions are met:

- i) The vehicle is being used temporarily to transport living marihuana plants from 1 location to another with intent to permanently retain those plants at a second location.
 - ii) An individual is not inside the vehicle unless he or she is either a registered qualifying patient to whom the living marihuana plants belong or the individual designated through the departmental registration process as the primary caregiver for the registered qualifying patient.
- b) **Improved lot.** Any lot containing a building, structure, place, work of art, or other object constituting a physical betterment of the lot beyond the natural state of land.
 - c) **Marihuana.** A controlled substance as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106
 - d) **Registration Identification Card.** A document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.
 - e) **Primary Caregiver.** A person who is at least 21 years old and who has been registered by State of Michigan Department of Community Health to assist with a Qualifying Patient's use of medical marihuana and who has not been convicted of a felony as defined in the Michigan Marihuana Act.
 - f) **Primary Caregiver Facility.** A building in which the activities of a Primary Caregiver as defined in the Michigan Medical Marihuana Act and in this Ordinance are conducted.
 - g) **Transportation of Medical Marihuana.** As defined by MCL 750.474

25. Modify the following Definitions:

- a) **Structure.** Anything constructed or erected, which requires permanent or non-permanent location on the ground or attachment to something having such location. Structures shall include, but not be limited to, parking areas, swimming pools and signs or signboards.
- b) **Person.** A legal entity or individual human being. (eliminates duplicate definition)