

ARTICLE II. ADMINISTRATION AND ENFORCEMENT*

***Cross references:** Administration, ch. 2.

Sec. 110-41. Zoning commission.

The city planning commission is hereby appointed as the zoning commission to recommend the boundaries of the various original zoning districts and appropriate regulations for the enforcement of a zoning ordinance.

(Code 1977, § 42.800)

Cross references: Administration, ch. 2.

State law references: Authority, RSMo 89.070.

Sec. 110-42. Adoption of zoning regulations and zoning map.

(a) The regulations of this chapter and the zoning district map may be adopted by the legislative body as an ordinance, after a public hearing by the zoning commission and a second public hearing by the legislative body. Such public hearings shall follow the exact procedures as defined and outlined in section 110-45(b)(3).

(b) No other notice required in this chapter for amendments or change of boundaries need be given.

(c) The zoning commission shall make a preliminary report of the recommendations to the legislative body. The legislative body may make suggestions and recommendations at this point.

(1) The zoning commission, after proper publication as described in this chapter, shall hold a public hearing, at which time the zoning regulations, as proposed, are read publicly, and any interested citizen may make comments, recommendations and suggestions.

(2) The zoning commission shall make a final report of suggested regulations and district boundaries to the legislative body.

(3) The legislative body may accept the recommendations, change them in whole or in part, or refer them back to the zoning commission with their recommendations for changes or study.

(4) After the proposed regulations are in form suitable to the legislative body, they shall advertise and hold a public hearing on the proposed regulations and may adopt such ordinance and map.

(Code 1977, § 42.805)

Sec. 110-43. Enforcement of chapter.

It shall be the duty of the superintendent of buildings, or any other public official, so designated, or any deputy or inspector working under his direction, to enforce the provisions of this chapter and to refuse to issue any permit for any building or structure or for the use of any premises which would violate any of the provisions of this chapter, and to cause any building, structure, place or premises to be inspected and examined, and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provision of this chapter. If any permit is issued that is not in conformity with the provisions of this chapter, such permit shall be null and void. Any building or structure erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land used in violation of this chapter shall be deemed a public nuisance, and such building official is hereby authorized and directed to institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; to restrain, correct or abate such violation and to prevent the occupancy of such building, structure or land; or to prevent any illegal act, conduct or use in or about such premises.

(Code 1977, § 42.810)

Sec. 110-44. Permits.

(a) *Zoning permits.* Zoning permits shall be issued according to the following procedures:

(1) No building or additions to buildings or other structures shall be erected, constructed, reconstructed, altered, repaired or converted, without first obtaining a zoning permit from the building official so appointed. No permit shall be issued unless there is filed in the office of the building official, information including, but not limited to, construction plans and plot plans, drawn to scale, showing the exact location of any proposed structures on the building site to be occupied, and other information necessary to determine if the proposed application meets the requirements of this chapter and any other ordinance applicable. Such application shall include in writing the proposed use of such buildings or premises.

(2) An application for a building permit shall be approved or denied by the building official within a reasonable time, such time not to exceed ten business days from the date of receipt. If the application is denied, the reason for such denial shall be stated, in writing, upon the application, and applicant so notified of such denial.

(3) There shall be a fee in such amount as established by the board of aldermen from time to time charged for each zoning permit issued in accordance with this chapter.

(4) A permit shall expire after one year; provided, however, that extensions may be made where warranted.

(5) A record of all zoning permit applications and zoning permits issued shall be kept in the office issuing such permits.

(6) A permit issued in accordance with the provisions of this chapter and other pertinent ordinances, may be revoked by the issuing officer at any time prior to the completion of the structure for which the permit was issued, when it shall appear there is a departure from the approved plans, specifications and/or requirements or conditions required under the terms of the zoning permit, or the zoning permit was issued under false representation, or that any other provisions of this chapter or other ordinance are being violated.

(7) Failure, refusal or neglect of any property owner or his authorized representative to apply for and secure a valid zoning permit, including the payment of the prescribed fee as provided, shall be reason for the issuance of a stop order by the building official, provided such owner or authorized representative shall have been notified in writing at least 48 hours prior to the issuance of such stop order that he is in violation of

ordinances of the city. The stop order shall be posted on or near the property in question, in a conspicuous place, and no further construction shall proceed. Where such building or construction has proceeded without filing for and receiving a valid permit, the fee for the issuance of a subsequent building permit shall be doubled.

(b) *Occupancy permits.* Occupancy permits shall be issued according to the following procedure:

(1) Subsequent to the effective date of the ordinance from which this chapter is derived, no change in the use of land, and no change in the use of existing buildings shall be made until a certificate of occupancy shall have been issued by the building official. A certificate of occupancy for a new building or the structure alteration of an existing building shall be applied for coincident with the application for a building permit, and shall be issued within ten days after the erection or alteration of such building or part thereof shall have been accomplished in conformity with the ordinances of the city.

(2) Pending the issuance of a regular certificate of occupancy, a temporary certificate of occupancy may be issued by the building official which shall be valid for a period not to exceed six months, during the completion of alterations or during partial occupancy of a building pending its completion. Such temporary certificate shall not be construed in any way as altering the respective rights, duties or obligations of the owners or of the city relating to the use or occupancy of the premises, or any other matter covered by this chapter. Such temporary certificate shall not be issued except under such restrictions and limitations as will adequately ensure the safety of the occupants.

(3) The certificate of occupancy shall state that the building or proposed use of the premises complies with all the building and health ordinances, and with the provisions of this chapter.

(4) A record of all certificates of occupancy shall be kept on file in the office of the building official, and copies thereof shall be furnished on request to any person having a proprietary or tenant interest in the building or premises affected.

(5) A certificate of occupancy shall be required for all nonconforming uses. Application for a certificate of occupancy for nonconforming uses shall be filed with the building official within 12 months from the effective date of the ordinance from which this chapter is derived, accompanied by affidavit or proof that such nonconforming use was lawfully commenced prior to the effective date of this ordinance.

(6) A fee of such amount as established by the board of aldermen from time to time shall be paid to the building official for the issuance of such certificate of occupancy for nonconforming uses and for each copy of all certificates of occupancy; provided, however, that no fee shall be charged for the issuance of an original certificate of occupancy applied for coincident with the application for a building permit. All fees so collected shall be accounted for to the city.

(Code 1977, § 42.815)

Sec. 110-45. Amendments, supplement or change of boundaries or regulations; fees.

(a) The legislative body may, from time to time, amend, supplement, change, modify or repeal such regulations, restrictions and boundaries contained in this chapter whenever the public necessity, convenience or general welfare requires; provided, however, that such amendment, change, supplement, modification or repeal, shall have first been submitted to the city zoning commission for its review and report as to the compatibility with the comprehensive plan.

(b) The procedure shall be as follows:

(1) *Initiation.* A proposal for an amendment or change of zoning may be initiated by:

- a. The legislative body;
- b. The zoning commission; or
- c. Owners of property affected.

(2) *Application and fee.* A proposal for an amendment made under subsection (b)(1)a of this section must be filed with the city on approved forms, at least ten days prior to any regular meeting of the zoning commission. A filing fee of such amount, as established by the board of aldermen from time to time, to secure payment of publication costs shall be submitted with the application.

(3) *Hearings.* Upon receipt of a valid proposal for an amendment as outlined in subsection (b) of this section, the legislative body shall set a date for a public hearing. A published notice of the hearings shall appear once, in the official newspaper of the city, or a paper of general circulation, at least 15 days prior to such hearing. Such notice shall include at least the following information:

- a. Time and place of hearing;
- b. The proposed change;
- c. The legal description of the property; and
- d. Approximate location by street address.

(4) *Notice to zoning commission.* Upon receipt of an application as outlined in this section, the legislative body, or its designated agent, shall refer the application to the zoning commission for its review and report.

(5) *Posting and notices.* A notice shall be posted in a conspicuous place on or near the property on which the action is pending.

(6) *Protests.* Protests against such amendment or change may be filed in the office of the city clerk at least five days prior to the public hearing on petitions duly signed and acknowledged by the owners of 30 percent or more of either of the areas of the land (exclusive of streets and alleys) included in such proposed change, or within an area determined by lines drawn parallel to and 185 feet distant from the boundaries of the district proposed to be changed.

(7) *Action by the legislative body.* Upon receipt of the written recommendation of the city zoning commission, and after public hearing, duly published and notice properly made, the legislative body may approve or deny the application, except that if a valid protest has been filed, the application shall not be adopted except by at least a two-thirds majority vote of all members of the legislative body. If the application affects the boundaries of any zone, the ordinance shall define the change of boundary, as approved, and shall order the official map to be changed, and shall amend the section incorporating the change and reincorporate such map, as amended.

(Code 1977, § 42.820)

Sec. 110-46. Special uses; procedures.

(a) An application for a special use, as listed in section 110-240 shall be filed with the city zoning commission, on approved forms, at least 25 days prior to any regular meetings of the zoning commission.

(b) The filing fee and hearing procedure shall follow those procedures and amount of fee

outlined in section 110-45(b)(2) and (3).

(c) After public hearing the zoning commission may approve or deny the application. The decision of the zoning commission shall be final unless appealed to the legislative body of the city within 14 days of the date of the decision of the zoning commission.

(Code 1977, § 42.830)

Sec. 110-47. Board of adjustment.

(a) *Creation; appointment and terms; organization; fees.* There is hereby created a board of adjustments. Such board of adjustment shall consist of five members, who shall be residents, to be appointed by the legislative body. Members shall be appointed for terms of five years. The members first appointed shall serve, respectively, one member for one year, one member for two years, one member for three years, one member for four years, and one member for five years. Vacancies shall be filled by appointment for the unexpired term. The members of the board of adjustment shall serve without compensation. All members shall be removable for cause by the appointing authority upon written charges and after public hearings. The board of adjustment shall annually elect one of its members as chairman, and one of its members as vice-chairman. The board of adjustment shall employ a reporter for the purpose of keeping records and minutes on testimony, objections, rulings, etc., of the board of adjustment, at their hearings. The board of adjustment shall adopt rules of procedure in accordance with the ordinance creating the board of adjustment. Meetings of the board of adjustment shall be held at the call of the chairman, or in his absence of the vice-chairman, and at such other times as the board of adjustment may determine. The filing fee for an appeal to the board of adjustment shall be such amount as established by the board of aldermen from time to time to cover the payment of publication costs.

(b) *Appeals procedure.* Appeals to the board of adjustment may be taken by any person aggrieved, or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer or building official. Such appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal shall have been filed with him, that by reason of the facts stated in the certificate a stay would, in his opinion, cause eminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and due cause shown.

(c) *Powers and duties.* The board of adjustment shall administer the details of appeals from, or other matters referred to it regarding the application of the zoning ordinance, as provided in this section. In this connection, the chairman or in his absence, the vice-chairman, may administer oaths and compel the attendance of witnesses.

(1) *Appeals.* The board of adjustment shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance, or any ordinance adopted pursuant thereto.

(2) *Variations.* Variations shall be granted according to the following procedure:

a. The board of adjustment may, when it shall deem the same necessary, grant variations from the specific terms of this chapter, which will not be contrary to the

public interest and where, owing to special condition, a literal enforcement of the provisions of this chapter will result in unnecessary hardship.

b. Such variance shall not permit any use not permitted by this chapter in such district.

c. Before granting a variance the board of adjustment must find that all of the following conditions have been met:

1. The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and such condition is not created by an action of the property owner or the applicant.

2. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.

3. The strict application of the provisions of this chapter of which the variance is requested, will constitute unnecessary hardship upon the property owner represented in the application.

4. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

5. Granting the variance desired will not be opposed to the general spirit and intent of this chapter.

(d) *Hearings.* Hearings shall be conducted as follows:

(1) The board of adjustment shall fix a reasonable time for the hearing of an appeal or any other matter referred to it. Notice of the time, place and subject of such hearing shall be published once in the official city newspaper at least 15 days prior to the date fixed for hearing. A copy of such notice shall be mailed to each party to the appeal and to the city zoning commission. Minutes of the hearing shall be kept showing the evidence presented, findings of fact by the board, decision of the board of adjustment and the vote upon each question. A record of any official action taken shall be filed in the office of the board of adjustment. All meetings shall be open to the public.

(2) In exercising the above-mentioned powers, such board of adjustment may, in conformity with the provisions of this section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken, and may issue or direct the issuance of a permit.

(3) The concurring vote of four members of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to affect any variation in this chapter. A decision of the board of adjustment becomes effective 30 days after the date of passage. The applicant may proceed, at his own risk, to effectuate the decision of the board of adjustment before the 30-day period has expired; however, should an appeal be made, such applicant shall have no recourse to the board of adjustment for any construction performed during the appeal period.

(4) Every decision of the board of adjustment shall be in writing, which shall contain a full record of the findings of the board of adjustment in the particular case. Each report shall be filed in the office of the city clerk, by case number under one or another of the following headings: "Appeals," "Variance," together with all documents pertaining thereto. The board of adjustment shall notify the legislative body and the city zoning commission of each variance granted under the provisions of this chapter.

(e) *Appeal from the decision of the board of adjustment.* Any persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board or bureau of the city, may present to the circuit court of the city a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of such illegality. Such petition must be presented to the court within 30 days after the filing of the decision in the office of the board of adjustment. Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment, and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board of adjustment and on due cause shown, grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take additional evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his finding of fact and conclusions of law, which shall constitute a part of the proceedings upon which a determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Costs shall not be allowed against the board of adjustment, unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from. All issues in any proceedings under RSMo 89.080--89.110 shall have preference over all other civil actions and proceedings.

(Code 1977, § 42.835)

Cross references: Administration, ch. 2.

Sec. 110-48. Penalties for violation of chapter.

(a) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of such sections of this chapter, or any ordinance or other regulations made under the authority conferred hereby, the proper local authorities of the city may, in addition to other remedies, institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation to prevent the occupancy of such building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

(b) The owner or general agent of a building or premises where a violation of any provision of this chapter has been committed or shall exist, or the lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist, or the owner, general agent, lessee or tenant of any part of the building or the premises in which such violation has been committed or shall exist, or the general agent, architect, builder, contractor or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation shall exist shall be guilty of a misdemeanor punishable by a fine of not less than \$10.00 and not more than \$100.00 for each and every day that such violation continues. If the offense is willful, upon conviction, the punishment shall be a fine of not less than \$100.00 or more than \$250.00 for each and every day that such violation shall continue, or by imprisonment for ten days for each and every day such violation shall continue, or by both such fine and imprisonment in the discretion of the court.

(c) Any such person who, having been served with an order to remove any such violation, shall

fail to comply with such order within ten days after such service or shall continue to violate any provision of this chapter, made under the authority granted by RSMo 89.010--89.140, shall also be subject to a civil penalty of \$250.00.

(Code 1977, § 42.840)

Sec. 110-49. Nondiscrimination.

Nothing contained in this chapter shall be construed as authorizing the legislative body to discriminate on any basis prohibited by state or federal law.

(Code 1977, § 42.850)

Sec. 110-50. Reasonableness of chapter.

Any taxpayer, or any other person having an interest in property affected by this chapter, may have the reasonableness of this chapter or regulation of this chapter determined by bringing an action in the circuit court of the county in which such city is situated against the governing body of the city.

(Code 1977, § 42.860)

Sec. 110-51. Temporary moratorium on the location of manufactured homes.

(a) A moratorium shall be imposed upon the location of manufactured homes within the city limits of the City of Ava.

(b) For the purposes of this ordinance, manufactured home is defined as a factory-built structure transportable in one or more sections, designed to be occupied as a single-family residential dwelling; not constructed or equipped with a permanent hitch or other device intended for the purpose of moving the structure from one place to another, other than for moving to a permanent site from the factory or distributor; installed on a permanent foundation; designed, manufactured and certified to conform to the National Manufactured Housing Construction and Safety Standards Act of 1974.

(c) This moratorium shall take effect immediately upon approval by the City of Ava Board of Aldermen and shall remain in effect for a period of 18 months.

(d) During the term of this section the planning and zoning commission shall study the issue of manufactured homes for the purpose of determining whether the city comprehensive plan and zoning ordinance should allow for the location of manufactured homes in the city. This study will be made in coordination with a review of land development issues in the comprehensive plan and planning/zoning ordinances currently in progress. The planning and zoning commission shall submit one or more reports to the city board of aldermen containing such recommendations as it deems appropriate for amendments to the zoning ordinance.

(Ord. No. 686, 6-14-05)

Sec. 110-52. Planning administration.

The administrative officer shall oversee administration and enforcement of this chapter. The administrative officer shall be the director of development for the city. The powers and duties of the administrative officer shall be, but are not limited to, the following:

(a) Maintain permanent and current records pertaining to this chapter, including, but not

limited to, all maps, amendments and variances.

(b) Forward to the planning commission all information and data necessary to perform their function under provisions of this chapter.

(c) Forward to the board of adjustment, applications for variances, interpretive relief, or other matters on which the board of adjustment is required to act under this chapter.

(d) Initiate a review of the provisions of this chapter and zoning map at least every two years and make finding available to the planning commission for their consideration.

(e) Enforce all provisions of this chapter and provide specific notification of violations. If violations are not abated in a reasonable time period, as specified, it is the administrative officer's responsibility to document the uncorrected violation and forward said document to the municipal court clerk for further legal action.

(f) Review and verify for zoning compliance the usage associated with each application for an occupancy permit consistent with applicable city ordinances prior to issuance of a business license.

(Ord. No. 737, 6-26-07)

Secs. 110-53--110-80. Reserved.