

1st reading \_\_\_\_\_  
P&Z Action \_\_\_\_\_  
2nd reading \_\_\_\_\_  
3rd reading \_\_\_\_\_  
Voted On \_\_\_\_\_  
Ayes: \_\_\_\_\_ Nays: \_\_\_\_\_  
PASSED \_\_\_\_\_ DEFEATED \_\_\_\_\_

**ORDINANCE NO. 2018-50  
(AS AMENDED)**

**AN ORDINANCE  
AMENDING SECTION 1142.06 OF THE CODIFIED  
ORDINANCES OF ORANGE VILLAGE TO PROVIDE A  
PROCEDURE FOR COUNCIL TO EXERCISE  
ADMINISTRATIVE AUTHORITY UNDER THE ORANGE  
VILLAGE ZONING CODE.**

WHEREAS, on November 6, 2017, the electors of Orange Village enacted an amendment Article III, Section 9, Powers and Duties, of the Orange Village Charter which formally delineated the powers of Council as legislative and administrative powers; and

WHEREAS, Council has the authority, pursuant to Article III, Section 9(C) of the Charter of Orange Village to exercise certain administrative authority, effective January 1, 2019; and

WHEREAS, Council desires to amend Section 1142.06 of the Orange Village Codified Ordinances to establish a procedure for making administrative decisions pursuant to Article III, Section 9(C) of the Charter of Orange Village, effective March 15, 2019; and

WHEREAS, this ordinance has been referred to the Planning and Zoning Commission for a report and recommendation.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF ORANGE VILLAGE, STATE OF OHIO:**

SECTION 1. That Section 1142.06, Variance Rules and Procedure, of the Codified Ordinances is amended to read and provide as follows:

**“1142.06 ADMINISTRATIVE POWERS: RULES AND PROCEDURE.**

- (a) Authority. Pursuant to Article III, Section 9(C) of the Orange Village Charter, Council may grant variances, special use permits and make findings declaring that uses are similar, harmonious and compatible with other permitted uses in the Planning and Zoning Code, after public hearing, where there are practical difficulties or substantial and unreasonable hardship in carrying out the spirit and intent of the Code, and in order to protect the general purposes of the Zoning Code so the public health, safety and general welfare may be secured and substantial justice done.
- (b) Procedure. The procedures for considering a variance or other administrative relief to the zoning code, shall be as follows:
- (1) Upon the filing of an application with the Building Department, which must be accompanied by the appropriate fees and deposits required under Chapter 1327 of the Building Code, the Building Department shall:

- (A) Place the request for administrative relief on the agenda for the next Planning and Zoning Commission meeting next occurring no less than fourteen (14) days after receipt of the application, fees and deposits.
  - (B) No later than ten (10) days before the Planning and Zoning Commission meeting at which the matter is to be first considered, the Secretary of the Planning and Zoning Commission shall mail notice of the variance request to the neighbors of the applicant. For purposes of this section, “neighbors” means the owners of property abutting or directly across the street from the property that is the subject of the request for administrative relief. The addresses of such owners shall be obtained from the addresses appearing on the Cuyahoga County GIS, currently known as “Cuyahoga County, Ohio MyPlace”. The failure to mail notices to owners whose names do not appear on such lists, as well as the failure of delivery of such notice, shall not invalidate any variance granted hereunder. The mailed notification shall set forth the time and place of the first Planning and Zoning Commission meeting where the matter will be on the agenda and a summary description of the requested administrative relief.
- (2) The Planning and Zoning Commission shall take evidence and sworn testimony from proponents and opponents (if any) of the requested administrative action and shall recommend to Council an appropriate disposition of the action. The Commission shall allow the cross-examination of all witnesses and shall allow all proponents and opponents (if any) to present their cases in full. The Planning and Zoning Commission meeting shall be recorded, and the recording of the meeting may be transcribed by a professional court reporter at the request of any party and such transcription shall be the official transcript of the hearing.
  - (3) After the Planning and Zoning Commission makes its recommendation to the Village Council, the Clerk of Council shall schedule a public hearing regarding the requested administrative relief. Notice of the hearing shall be given by the Clerk by publication on the Village’s website of the date and time of the public hearing, which notice shall be posted not less than seven (7) days prior to the hearing.
  - (4) The Law Director shall submit a draft of a Final Order and Decision of Council with Conclusions of Fact (“Final Order”) to the Village Council not later than five (5) days prior to the public hearing. The draft Final Order shall be based upon the recommendation of the Planning and Zoning Commission. Given the possibility of litigation on any request for administrative action, the Final Order shall be subject to the attorney-client privilege and shall not be a public record until Council votes on the document.
  - (5) Council shall hold a public hearing, where any interested party may speak for or against the proposed administrative relief. The record of the matter shall consist of the evidence and testimony submitted to the Planning & Zoning Commission and the arguments presented to Council. After the public hearing the Village Council may take any of the following actions:
    - (A) Vote on the Final Order as recommended by the Planning and Zoning Commission.
    - (B) Remand the matter to the Planning and Zoning Commission so it may reconsider its recommendation upon such further evidence and testimony

that may be submitted. The Commission shall follow the same procedure as is required for the initial hearing of the matter.

- (C) Meet with the Law Director in executive session to discuss prospective litigation so that revisions to the Final Order may be considered in a manner which preserves the attorney-client privilege.
- (6) Any recommendation by Planning and Zoning Commission to disapprove the requested administrative relief shall require a vote of five (5) members of Council for approval.
- (c) Standard of Review: Variance. A variance may be granted where the literal application of the provisions of this Zoning Code would result in practical difficulties or hardship in the reasonable use of a property, and such difficulties or hardship are not necessary to advance any purpose of this zoning code. Such difficulties should be peculiar to the property in question, making it distinct from the general difficulties of other properties in the district, provided that all similarly situated properties shall be treated the same. Factors to be considered and weighed in determining whether a property owner seeking a variance has encountered such practical difficulties or an unnecessary hardship in the use of the subject property may include, but are not limited to:
  - (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
  - (2) Whether the variance is a substantial deviance from the use or area requirements;
  - (3) Whether the character of a particular neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
  - (4) Whether the variance would adversely affect the delivery of government services, including, but not limited to, water, sewer, and garbage;
  - (5) Whether the property was purchased with knowledge of the zoning restriction;
  - (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance;
  - (7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance;
  - (8) Whether other exceptional circumstances or conditions, which are applicable only to the property involved or to the intended use or development of the property do not apply to other property within the same zoning district, or whether there are circumstances justifying a variance on one lot, and that a variance would be justified on any lot where the same set of circumstances exist.
- (d) Standard of Review: Similar Use. If a Chapter of the Zoning Code provides a standard for approving a use that is similar to a permitted use in that Chapter, that standard shall be applied. If a proposed use of a property does not fit one of the definitions of a permitted use within a zoning district, the use may be determined to be a Similar Use if it is harmonious and compatible with the other uses in the district and consistent with the purpose and intent of the district and will not, when appropriate conditions are imposed by the Council and adhered to by the property owner, adversely impact neighboring properties. Council may revoke a Similar Use permit, upon the complaint of the Building Commissioner, if it finds that the conditions that were imposed upon the property as a condition of permitting the Similar Use have not been met by the property owner.
- (e) Expiration of Approval. If, after the expiration of one (1) year from the date when Council has approved the requested relief, no substantial work has been performed in

accordance with the terms and conditions for which such approval was granted, the Building Commissioner shall give a written notice to the property owner that the approval will expire in thirty (30) days. The notice from the Building Commissioner shall also advise the owner of the right to request an extension of the approval by filing a request for such extension with the Building Commissioner. If the property owner or the owner's representative files a written request for an extension of the approval with the Building Commissioner, the Planning and Zoning Commission shall consider the request and may grant an extension for up to one additional year. Only one extension may be granted by the Planning and Zoning Commission. After the expiration of the approval (including any extension thereof), the approval shall be deemed null and void, and all regulations governing the subject property shall be in effect as if no approval had ever been granted. The Building Commissioner shall advise the Clerk of Council of the expiration of the approval, and the Clerk shall enter such expiration upon the Council's records.

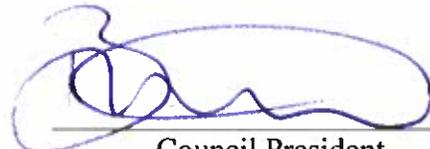
- (f) Effect of Denial. In the event a request for administrative relief is denied, neither the Planning and Zoning Commission nor Council shall consider a request for the same, or a substantively similar variance, unless the applicant can first show that the underlying conditions which relate to the request have substantially changed since the prior request for a variance was denied. The determination of whether a request for administrative relief is substantively similar to a prior request shall be made by the Planning and Zoning Commission and its decision shall be final."

SECTION 2. That existing Section 1142.06 of the Codified Ordinances of Orange Village is repealed.

SECTION 3. That the actions of this Council concerning and relating to the passage of this legislation were adopted in lawful meetings of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were held in compliance with all legal requirements including Chapter 105 of the Codified Ordinances of Orange Village.

SECTION 4. That this Ordinance shall be effective at the earliest time permitted by law.

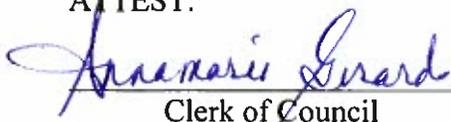
PASSED: FEB. 6, 2019

  
\_\_\_\_\_  
Council President

Submitted to the Mayor for approval on this 6<sup>th</sup> day of FEB, 2019

Approved by the Mayor this  
6<sup>th</sup> day of FEB, 2019

ATTEST:

  
\_\_\_\_\_  
Clerk of Council

  
\_\_\_\_\_  
Mayor