

ZONING LOCAL LAW
TOWN OF KIRKWOOD

ARTICLE XIV
ADMINISTRATION

SECTION 1401 Enforcement

This Local Law shall be enforced by a person designated as the Enforcement Officer by the Town Board who shall in no case except under written order of the Zoning Board of Appeals, grant any building permit or certificate of occupancy for any building or premises where the proposed construction, alteration or use thereof would be in violation of any provision of this Local Law. If the Enforcement Officer shall find any violation of this Local Law, he shall serve written notice of said violation upon the violator. From the date of such written notice, or from such date as may be designated in said notice, said person in violation shall have thirty (30) days to comply with the provisions of this Local Law.

SECTION 1402 Building Permit and Certificate of Occupancy

Building permits and certificates of occupancy shall be issued by the Enforcement Officer in accordance with the requirements of the New York State Uniform Building & Fire Prevention Code, when the application for the same is in compliance with the requirements of this Local Law and Section 502. Procedural steps are outlined in Local Law 13 - FIRE PREVENTION AND BUILDING CODE, SECTION 3. CODE ENFORCEMENT OFFICER AND INSPECTORS.

SECTION 1403 Zoning Board of Appeals (Moved to Article XV titled Zoning Board of Appeals and Planning Board Rules)

SECTION 1404 Amendment

- A. This Local Law may be amended as provided by law. Any proposed amendment shall be submitted to the Town Planning Board for a report and recommendation prior to any action thereon by the Town Board. If the Planning Board recommends against the enactment of any proposed amendment, it shall become effective only by a favorable vote of four (4) members of the Town Board.
- B. The Town Board may, from time to time, on its own motion or on petition, in accordance with the applicable provisions of the Town Law, after public notice and hearing, amend, supplement, change, modify or repeal this Local Law
- C. Each amendment being reviewed shall contain a detailed environmental assessment form pursuant to Article 8 of the Environmental Conservation Law of the State of New York which shall include a description and evaluation of the nature of the probable environmental impact including specification of the predictable adverse impacts on the natural environment and an evaluation of measures to mitigate adverse effects. Any Environmental Impact Statement required shall be submitted on electronic media in Microsoft Word format.

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SECTION 1405 **Notice of Hearing (Refer to Section 1411, Paragraph C.).**

SECTION 1406 **Violations and Penalties (Refer to Article XVII titled Ordinance Violations and Penalties)**

SECTION 1407 **Application Fees (Refer to Article XVI titled Building Code and Miscellaneous Fee Schedules)**

SECTION 1408 **Separability**

The provisions of this local law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words, or parts of this local law or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this local law would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and as if such person or circumstance, to which the local law or part thereof is held inapplicable, had been specifically exempt therefrom.

SECTION 1409 **Repealer.**

The Town of Kirkwood Zoning Ordinance adopted on September 4, 1973, as amended thereafter, be and same is hereby repealed. The repeal of said ordinance, as amended, shall not affect or impair any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected.

All actions and proceedings, civil or criminal, commenced under or by virtue of said ordinance so repealed, and pending immediately prior to the taking effect of such repeal, may be prosecuted and defended to final effect in the same manner as if such provisions were not repealed.

Nothing herein shall act to validate the extension, expansion, enlargement or cessation of any non-conforming use or building that is in violation of said ordinance so repealed on the effective date of said repeal.

SECTION 1410 **Effective Date**

This local law shall take effective immediately upon filing with the New York State Secretary of State in accordance with SECTION 27 of the Municipal Home Rule Law.

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SECTION 1411 Zoning Map Amendments.

A. Authority to file.

Amendments to the Zoning Map (rezonings) may be initiated only by the governing body or by a petition requesting such change, presented to the governing body, duly signed by the owners of at least 50% of the frontage of the parcels included within the area proposed to be rezoned. Rezoning petitions may be filed by the owner or by the owners' authorized agent.

B. Application filing.

Complete applications for Zoning Map amendments must be filed with the Town Clerk for consideration by the Town Board. If the Town Board decides to entertain the petition, it shall be referred to the Planning Board pursuant to Section 1411 H. If the governing board decides to not to entertain the petition it shall be deemed denied 60 days after filing.

C. Notice of hearing.

At the time of the public hearing on any rezoning amendment which is in regard to rezoning of any premises to any classification, an affidavit stating that no earlier than twenty (20) days and no later than ten (10) days prior to such hearing, written notice of the proposed rezoning has been mailed to the owners of the property, as the names and addresses appear on the latest completed assessment roll, within one thousand (1000) feet of the premises to be rezoned, and listing all the names and addresses of the persons to whom such notice was mailed.

D. Planning Board review and report.

The Planning Board must review all proposed Zoning Map amendments and prepare a report that evaluates the proposed amendment in light of adopted plans, the relevant provisions of this Zoning Ordinance and the review criteria of Section 1411 H.

E. Referrals.

1. Whenever required under §§ 239-l and 239-m of the General Municipal Law, Zoning Ordinance Map amendments must be forwarded to the County Planning Department for review prior to final action by the governing body.
2. If any proposed amendment consists of a change in the district classification applying to real property within 500 feet of a municipal boundary, the Town Clerk shall refer the proposed amendment to the chief elected official of the affected Town of Kirkwood prior to final action.

F. State Environmental Quality Review.

For Zoning Map amendment applications subject to SEQR requirements, all required environmental reviews must be completed before a public hearing is held and final action is taken on the amendment.

G. Hearing and final action by governing body.

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1. After receiving the report of the Planning Board, the governing body must convene a public hearing on the proposed Map amendment.
2. Following the close of the public hearing, the governing body may act to approve the proposed Zoning Map amendment, approve the proposed Zoning Map amendment with modifications or deny the proposed Zoning Map amendment. The governing body may also return the application to the Planning Board for further consideration, together with a written explanation of the reasons for doing so.
3. The governing body may act by a simple majority vote, except when a valid protest petition has been submitted in accordance with Section 1411 I., approval or approval with modifications requires a majority plus one vote of the governing body members.
4. The municipal Clerk shall notify, by mail, the petitioner of the action taken by the governing body.
5. If the governing body approves the amendment, supplement, change or modification to district boundaries or classifications, the Zoning Map shall be amended after publication as required by local law.
6. The governing body may, in order to protect the public health, safety, welfare and environmental quality of the community, attach to its resolution approving the petition, additional conditions deemed necessary to achieve the review criteria.

H. Review criteria.

In reviewing and making decisions on Zoning Map amendments, the Planning Board and governing body must consider at least the following criteria:

1. Whether the proposed Zoning Map amendment corrects an error or inconsistency in the Zoning Ordinance or meets the challenge of a changing condition;
2. Whether the proposed rezoning is in substantial conformance with adopted plans and policies affecting the area proposed to be rezoned;
3. Whether public facilities (infrastructure) and services will be adequate to serve development allowed by the requested rezoning;
4. Whether the rezoning will substantially harm the public health, safety or general welfare or the value of nearby properties;
5. Whether the rezoning is compatible with the zoning and use of nearby property;
6. The suitability of the subject property for the uses and development to which it has been restricted under the existing zoning regulations; and
7. The gain, if any, to the public health, safety and general welfare due to denial of the application, as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.

I. Protest petitions.

1. A formal protest petition opposing a Zoning Map amendment must be submitted to the governing body or on the public record before the governing body's vote, allowing sufficient time for the Town Board to determine the validity of the petition.
2. A protest petition will be considered "valid" if it is signed by:

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- a. The owners of 20% or more of the area of land included in such proposed change; or
 - b. The owners of 20% or more of the area of land immediately adjacent to that land included in such proposed amendment, extending 100 feet therefrom; or
 - c. The owners of 20% or more of the area of land directly opposite thereto, extending 100 feet from the street frontage of such opposite land.
3. When a valid protest petition has been submitted, approval of a Zoning Map amendment requires a majority plus one vote of those governing body members.