

DANIEL M. HOPRIGAN
IN THE COURT OF COMMON PLEAS
2013 AUG 30 PH 3: 05 SUMMIT COUNTY, OHIO

SUMMIT COUNTY
STATE OF OHIO, ex rel.)
MARCELLA GAYBOSH)
)
)
 Relator) JUDGE AMY CORRIGALL JONES
)
)
 v.)
)
 CITY OF TWINSBURG, et al.,) TRIAL BRIEF ON BEHALF OF THE
) CITY OF TWINSBURG
)
 Respondents)

Now comes the City of Twinsburg, Ohio, Mayor Katherine A. Procop and Council members William Furey, Ted Yates, Gary Sorace, Sam Scaffide, Seth Rodin, Maureen Stauffer and Bob McDermott (hereafter collectively referred to as “Defendants” or “City”) by and through undersigned counsel and pursuant to this Court’s Order rendered at the Status Conference of July 3, 2013 submits its Trial Brief.

STATEMENT OF FACTS:

On July 3, 2013 counsel for the parties participated in a telephone Status Conference wherein it was agreed that this matter would be submitted to the Court by way of filing cross Trial Briefs on August 30, 2013. The Court also afforded the parties the opportunity to submit a Stipulation of Facts. Undersigned has not received any correspondence from Relator’s counsel since July 3, 2013 and no proposed facts have been suggested for stipulation as of the date of submission of the cross Trial Briefs. Therefore, the City is setting forth the following statement of facts supported by affidavit or certified copies of relevant documents. Undersigned does not

anticipate that Relator or Relator's counsel will assert any objection as to the accuracy of the following factual assertions.

Plaintiff-Relator, Marcella Gaydosh, (hereafter "Gaydosh" or "Relator") is a resident of the City of Twinsburg, Ohio. Defendant-Respondent, City of Twinsburg, is a charter municipal corporation organized under the laws of the State of Ohio. Defendant, Katherine A. Procop is the current Mayor of the City of Twinsburg. Defendants William Furey, Ted Yates, Gary Sorace, Sam Scaffide, Seth Rodin, Maureen Stauffer and Bob McDermott are all duly elected members of City Council.

Gaydosh filed her Complaint for Declaratory and Injunctive relief and/or Mandamus. The essence of Gaydosh's claim is to have this Court declare City Ordinance 97-2012 invalid. Ordinance 97-2012 sought to amend §1149.09 of the Codified Ordinances of the City of Twinsburg establishing "Height Regulations" in industrial districts within the City. (A Certified Copy of Ord. 97-2012 is attached hereto as Exhibit A)¹ In the alternative, Relator requests this Court to issue a Writ of Mandamus ordering the City to place Ordinance 97-2012 on the ballot at the next election. (See Relator's Complaint page 3)

Prior to the adoption of Ordinance 97-2012, §1149.09 of the Codified Ordinances of the City of Twinsburg read as follows:

1149.09 HEIGHT REGULATIONS.

The height of any main or accessory industrial building shall not exceed 35 feet. However, building height in an I-2 and I-3 district may exceed 35 feet provided the front and rear yard depth is increased two (2) feet for each additional foot of height over 35 feet and the side yard width is increased one (1) foot for each additional foot of height over 35 feet and a

¹ 1. Ordinance 97-2012 also contains amendments to §1148.15 regarding Height Regulations for Commercial Districts. This amendment was simply a correction of an earlier clerical error and restored §1148.15 to the identical language it contained since 2008. That is why the only issue before this Court is the change to the height regulation in the Industrial I-2 and I-3 districts.

conditional use permit is approved. Maximum building height in an I-2 and I-3 Industrial District shall be recommended by the Mayor and Planning Commission and confirmed by City Council. (Certified Copy attached hereto as Exhibit B)

The City when confronted with the prospect of the redevelopment of the former Chrysler site sought to make accommodations that would make industrially zoned properties more uniform in height and attractive to modern development by allowing for the structures that house permitted industrial uses to have a maximum building height not to exceed forty five (45) feet. (Affidavit of Larry Finch Par. 6-7, Attached hereto as Exhibit C)

Larry Finch, the Director of Planning and Community Development referred the matter to the City Planning Commission to consider and review the impact of permitting increased building height in limited industrial districts. (Finch Affidavit; par. 7) On January 23, 2012 the City Planning Commission recommended that City Council increase the maximum permitted height of buildings to forty five (45) feet in the I-2 and I-3 Industrial districts only. (Finch Affidavit; par. 8) Pursuant to the Planning Commission's recommendation, City Council unanimously passed Ordinance 97-2012 on August 28, 2012 after having read the Ordinance on three separate Council meetings. Ordinance 97-2012 caps the maximum permitted building height in an I-1 district at thirty five (35) feet and in I-2 and I-3 districts at forty five (45) feet and specifically reads as follows:

1149.09 HEIGHT REGULATIONS.

The height of any main or accessory industrial building in an I-1 district shall not exceed 35 feet. Building height in an I-2 and I-3 district may not exceed forty-five (45) feet.

LAW AND ARGUMENT:

The City of Twinsburg designates its regulations for the governance of the zoning, development and general and specific use of land collectively as the “*Twinsburg Zoning and Development Regulations*”. Collectively these regulations may be found in the Codified Ordinances of the City of Twinsburg commencing with §1101.01 through §1203.19. (Affidavit of Larry Finch; Par. 5)

The Codified Ordinances of the City of Twinsburg provide that legislation that proposes to “change the regulations, districts or, building lines” must first be submitted to the Planning Commission for review and recommendation. (§1201(A) of the Codified Ordinances of the City of Twinsburg; attached hereto as Exhibit D) However, the Charter provides that changes to zoning classifications or districts, or the uses permitted in any zoning use classification or district must not only be submitted to the Planning Commission for report and recommendation but must also be placed before and approved by the majority of the voters before it can become effective. Relator correctly asserts that §7A.01 of the City Charter is the appropriate and controlling provision in this regard. That section states as follows:

ARTICLE VIIA

CHANGES TO ZONING CLASSIFICATIONS OR DISTRICTS

SECTION 7A.01 PROCEDURE.

Any change in zoning classifications or districts, or in the uses permitted in any zoning use classifications or districts within the City of Twinsburg must first be submitted to the Planning Commission, for consideration and report. In the event the City Council should approve any of the preceding requested changes, upon the report of the Planning Commission, it shall not be approved or passed by the declaration of an emergency, and it shall not be effective, but it shall be mandatory that the same be approved by a majority vote of all votes cast of the qualified electors of the City of Twinsburg and of each ward in which the property so changed is located at the next scheduled election. Said issue shall be submitted to the electors of the City only after approval by Council of a change

in zoning classifications or districts, or in the uses permitted in any zoning use classifications or districts; however, should Council disapprove any such changes, the issue shall not be submitted to the voters. However, any change in zoning classifications or districts or designation of zoning classifications or districts or in uses permitted in any zoning use classification of land hereinafter annexed to the City shall be subject to the requirements of Section 7A.05 herein.

Therefore, it is clear that the Charter contemplated that not all amendments to the Zoning and Development Regulation must be placed upon the ballot. The Charter specifically states **only** proposed changes “in zoning classifications or districts, or in the uses permitted in any zoning use classifications or districts” must be placed on the ballot. Therefore, the threshold issue before this Court is does Ordinance 97-2012 trigger the mandates of §7A.01 of the Charter? As demonstrated herein, the answer is unequivocally **NO**.

A. Does 97-2012 Change Zoning Classifications or Districts?

No. The districts created by the Twinsburg Zoning and Development Regulations are not different than that of many of the municipalities within Summit County or Ohio for that matter. Twinsburg has established residential, commercial or business and industrial districts designed to segregate similar land uses. All of these districts are further broken down into smaller classifications such as R-2, R-3, etc. in residential and likewise in commercial and industrial. It is not uncommon for a property owner to request a change of the zoning classification. For example, an individual may seek to change its zoning classification from a residential to a commercial designation in order to develop the property at a different use. Without question this change in classification must follow the mandates of §7A.01 and be placed on the ballot.

Just as clearly...the plain and unambiguous language in Ordinance 97-2012 does not propose to change the zoning classification or zoning district of any property

whatsoever. Without question – the zoning of not one single parcel of land in the City of Twinsburg would change as a result of Ordinance 97-2012. (Finch Affidavit; Par.9)

B. Does 97-2012 Change any Uses Permitted in any Zoning Classification or District?

No. The only change created by Ordinance 97-2012 was capping the permitted height of buildings in I-2 and I-3 districts at forty five (45) feet. The Ordinance maintained the maximum height of buildings in an I-1 district at thirty five (35) feet. Furthermore, the former §1149.09 (Exhibit B) would allow I-2 and I-3 buildings to be of an unlimited height if they can establish the appropriate side and rear yard setbacks.

Once established that no change has been made whatsoever to I-1 districts we can narrow our focus to the I-2 and I-3 districts. Section 1149.04 (I-2) and §1149.06 (I-3) establish the Permitted Uses in those respective districts. (A copy of Chapter 1149 as it existed prior to the adoption of 97-2012 is attached hereto as Exhibit D) Nothing contained in Ordinance 97-2012 increases, decreases, adds to or expands any of the uses previously permitted in an I-2 and I-3 district. Quite simply, all of the uses previously permitted in these Industrial districts are still permitted...no more and no less. Now they are only permitted in buildings that are no higher than forty five feet. Relator cannot logically point to any use that is permitted after the adoption of Ordinance 97-2012 that was not already permitted prior to its adoption.

If the drafters of the Twinsburg Charter wanted to mandate that EVERY change to ANY provision of the Zoning and Development Regulations must be submitted to the electorate they certainly could have written it that way. However, no matter how much the Relator protests to the contrary, Charter §7A.01 has clear and distinct language that limits what is required to be placed upon the ballot.

Chapter 1201 of the Codified Ordinances of the City of Twinsburg sets forth the statutory procedure for making amendments to the Zoning and Development Regulations. (A copy of §1201 is attached hereto as Exhibit E). This Chapter, which follows the mandates of §7A.01 of the Charter, provides for amendments to the regulations by Council as follows:

1201.01 AUTHORITY AND PROCEDURE.

A. The **Council may from time to time on its own motion** or on petition, after public notice and hearing, **amend or change the regulations**, districts or, building lines herein established, **but no such amendment or change shall be effective unless the ordinance or petition proposing such amendment or change shall first be submitted to the Municipal Planning Commission for approval, disapproval or suggestions**, and the Planning Commission shall have been allowed a reasonable time, not more than sixty days, for consideration and report. (Emphasis added)

Section 1201(D) further recognizes the distinction of the Charter requirements of placing a matter on the ballot by stating:

***** Said issue shall be submitted to the electors of the City only after approval of a change in zoning classifications or districts, or in the uses permitted in any zoning use classifications or districts** by the Council for an applicant. (Emphasis added)

Once again, the Zoning and Development Regulations, like the Charter, recognize that only certain code amendments require approval of the electorate. If such an amendment does not change zoning districts or change the uses permitted in any zoning district then the amendment does not have to be placed on the ballot. In the instant case the Planning Commission reviewed and recommended the change to 1149.09 (January 23, 2012) and City Council approved the amendment after three (3) readings at regularly scheduled public Council meetings. The requirements of the Charter and the code have been met.

The City fully acknowledges that any proposed change to the permitted and prohibited uses in any designated district within the City must first be reviewed by Planning Commission, approved by City Council and shall not become valid until approved by the majority of electors in each ward of the City. However, in addition to the regulations establishing the many permitted

and prohibited uses, the City of Twinsburg Zoning and Development Regulations contain numerous other rules, regulations and restrictions that do not trigger 7A.01. For example, it would be illogical to argue that Section 1172.09 regulating the spacing of trees along the public street should be placed on the ballot for approval or that regulations establishing number and size of parking spaces required for each and every commercial establishment (Chapter 1174) should not be amended unless first approved by the majority of voters. The City is obligated to follow the mandates of its Charter and not more.

Former §1149.09 Provided for the Establishment of a Maximum Building Height:

Exhibit B contains the language of the former §1149.09. The last sentence of that regulation states that “Maximum building height in an I-2 and I-3 Industrial District shall be recommended by the Mayor and Planning Commission and confirmed by City Council.” That is exactly what happened by adopting Ordinance 97-2012. Planning Commission reviewed and recommended and Council approved. Incredibly, the regulation that the Relator now insists be reinstated by this Court clearly contemplated and authorizes the action that Relator insists this Court must prohibit.

Relator is not Entitled to a Writ of Mandamus.

A writ of mandamus is an extraordinary remedy that can only be granted under certain conditions. The Ohio Supreme Court has ruled

In order to grant a writ of mandamus, a court must find that the relator has a clear right to the relief prayed for, that the respondent is under a clear duty to perform the requested act, and that the relator has no plain and adequate remedy at law. *State ex rel. Westchester v. Bacon* (1980), 61 Ohio St.2d 42, 44, 399 N.E.2d 81.

If allegations of complaint for writ of mandamus indicate that real objects sought are declaratory judgment and prohibitory injunction, complaint does not state cause of action in mandamus. *State ex rel. Ohio Civ. Serv. Employees Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.* (Ohio, 12-15-2004) 104 Ohio St.3d 122, 818 N.E.2d

688, 2004 SERB 4-49, 2004-Ohio-6363.

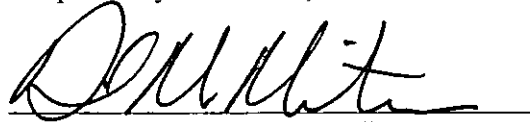
Declaratory judgment action provided adequate legal remedy to challenge constitutionality of local court rule, thereby precluding extraordinary relief in mandamus. *State ex rel. Kirk v. Burcham* (Ohio, 07-29-1998) 82 Ohio St.3d 407, 696 N.E.2d 582.

In the instant case, Relator clearly believes she has a viable alternative since she is requesting declaratory judgment and injunctive relief. (See Relator's Complaint for *Declaratory Relief, Injunctive Relief, and/or* Mandamus) Since Relator asserts that she has a plain and adequate remedy in the ordinary course of the law (although her being able to meet the burden of succeeding at that remedy is adamantly denied herein) mandamus cannot be granted.

CONCLUSION:

Ordinance 97-2012 only establishes a maximum height of buildings in the Industrial I-2 and I-3 districts and does not seek to change any zoning district or change any permitted use in any zoning district. The foregoing undisputed facts and argument clearly establish that the City of Twinsburg followed the requirements of both City Charter and the Twinsburg Zoning and Development Regulations in passing Ordinance 97-2012. Therefore, the City of Twinsburg respectfully requests that this Court deny the relief sought by the Relator and render judgment in favor of the Respondents including costs and reasonable attorney fees.

Respectfully submitted,



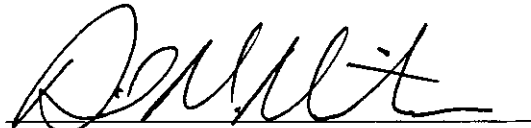
DAVID M. MAISTROS (#0047390)
Law Director for the City of Twinsburg
10075 Ravenna Rd.
Twinsburg, Ohio 44087
dmaistros@twinsburg.oh.us
330-963-6248
330-963-6251
Counsel for Respondents

CERTIFICATE OF SERVICE

Undersigned hereby certifies that a copy of the foregoing Trial Brief of the City of Twinsburg has been delivered by Regular U. S. Mail this 30th day of August, 2013 to Counsel for the Relator at the following address:

Warner Mendenhall
190 N. Union St., Suite 201
Akron, Ohio 44304
warnermendenhall@hotmail.com

Respectfully submitted,



DAVID M. MAISTROS (#0047390)
Law Director, City of Twinsburg

Counsel for Respondents

CITY OF TWINSBURG, OHIO

ORDINANCE 97-2012

**AN ORDINANCE AMENDING CHAPTER 1148 AND
1149 OF THE CODIFIED ORDINANCES OF THE CITY
OF TWINSBURG REGARDING "HEIGHT
REGULATIONS"**

WHEREAS, Council and the Administration has established a Planning Commission to study and make recommendations Zoning and Development Regulations in the City; and

WHEREAS, on the 23rd day of January, 2012 the Planning Commission reviewed and made such recommendations as they relate to the regulation of building heights; and

WHEREAS, pursuant to Ordinance 18-2012 this Council approved the recommendations of the Planning Commission by amending Sections 1148 (regulating Commercial height) and Section 1149 (regulating Industrial height); and

WHEREAS, Council recognizes that the amendments are necessary as they relate to the Industrial Districts and Council further wants to retain the language in the Zoning and Development Regulations as it existed prior to Ordinance 18-2012 as it relates to the Commercial Districts.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Twinsburg, County of Summit and State of Ohio:

SECTION I: That Chapter 1148.15 is hereby amended to read as follows:

1148.15 HEIGHT REGULATIONS.

The height of any main building shall not exceed thirty-five (35) feet in any C-1, C-2 and C-5 zoning district. Mechanical space for building equipment placed on a flat building roof may be allowed above the maximum height specified, provided that such mechanical space is set back a minimum of fifteen (15) feet from any exterior wall, does not exceed six (6) feet in height and is adequately screened from view, and provided, further, that such mechanical space and screening are approved by the Planning Commission. The height of any main building in a C-3 and C-4 zoning district may exceed 35 feet provided that the front and rear yard depth is increased by two (2) feet for each additional foot of height over 35 feet and the side yard width is increased by one (1) foot for each additional foot of height over 35 feet and a conditional use permit is approved. In a C-5 zoning district building height may exceed thirty-five (35) feet, if a conditional use permit is acquired through the process described at Chapter 1151.

SECTION II: That Chapter 1149.09 is hereby amended to read as follows:

1149.09 HEIGHT REGULATIONS.

The height of any main or accessory industrial building in an I-1 district shall not exceed 35 feet. Building height in an I-2 and I-3 district may not exceed forty-five (45) feet.

SECTION III. Any prior ordinances in conflict herewith, specifically Ordinance 18-2012 is hereby repealed upon passage.

SECTION IV: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in open meeting or meetings of this Council, and that all deliberations of this Council were in meetings open

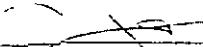
to the public and in full compliance with all legal requirements, including without limitations, those set forth in Section 121.22 of the Ohio Revised Code.

SECTION V: That this Ordinance shall take effect and be in force at the earliest period allowed by law upon its passage.

PASSED: 8128112

APPROVED: 8128112

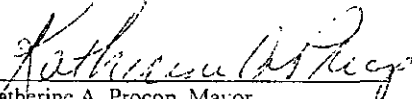
EFFECTIVE: 8128112



T. Ted Yates, President of Council

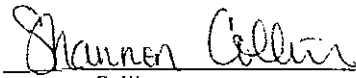
Submitted to the Mayor for approval this
28th day of August, 2012

Approved by the Mayor 8/28, 2012



Katherine A. Procop, Mayor

ATTEST:



Shannon Collins
Clerk of Council

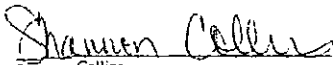
1st Rdg. 6-26-12
2nd Rdg. 7-10-12
3rd Rdg. 8-28-12

Passed: 8-28-12

Yes 7 No 0

CERTIFICATE OF POSTING

I, Shannon Collins, Clerk of Council, of the City of Twinsburg, State of Ohio, do hereby certify that publication of the foregoing ordinance, resolution was duly made by posting true copies afloat of the most public places in said City as determined by Section 113.02 of the Codified Ordinances of the City of Twinsburg, each for a period of fifteen days commencing on the 31 day of August, 2012



Shannon Collins
Clerk of Council
City of Twinsburg

STATE OF OHIO


CERTIFICATION

CITY OF TWINSBURG)
COUNTY OF SUMMIT)

I, SHANNON COLLINS, do hereby certify that I am the duly appointed, qualified Clerk of Council of the City of Twinsburg, Ohio, and that the attached is a true and exact copy of ORDINANCE 97-2012 adopted by Council of the City of Twinsburg at their Regular Meeting on August 28, 2012.

That publication of ORDINANCE 97-2012 will be posted in accordance with requirements stated in the City Charter. The resolution was read on the following date, June 26, 2012, July 10, 2012 and August 28, 2012; and that such ORDINANCE is of record in the 2012 Legislation Records of the City of Twinsburg, Ohio.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of the City of Twinsburg, this 29th day of August, 2013.



Shannon Collins
Clerk of Council

1149.09 HEIGHT REGULATIONS.

The height of any main or accessory industrial building shall not exceed 35 feet. However, building height in an I-2 and I-3 district may exceed 35 feet provided the front and rear yard depth is increased two (2) feet for each additional foot of height over 35 feet and the side yard width is increased one (1) foot for each additional foot of height over 35 feet and a conditional use permit is approved. Maximum building height in an I-2 and I-3 Industrial District shall be recommended by the Mayor and Planning Commission and confirmed by City Council. (Ord. 87-1989. Passed 7-11-89)

8

STATE OF OHIO

CERTIFICATION

CITY OF TWINSBURG)
COUNTY OF SUMMIT)

I, SHANNON COLLINS, do hereby certify that I am the duly appointed, qualified Clerk of Council of the City of Twinsburg, Ohio, and that the attached is a true and exact copy of Zoning Code 1149.09 adopted by Council of the City of Twinsburg at their Regular Meeting on July 11, 1989.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of the City of Twinsburg, this 29th day of August, 2013.



Shannon Collins
Clerk of Council

STATE OF OHIO)
) SS
COUNTY OF SUMMIT)

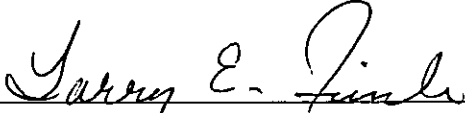
**AFFIDAVIT OF
LARRY E. FINCH**

I, Larry E. Finch, being first duly sworn, depose and say:

1. I have personal knowledge of all facts contained in this Affidavit.
2. I have reached the age of majority, I am of sound mind, and I am competent to testify in all matters stated herein. If called as a witness, I will testify as follows:
3. I am the currently the Director of Planning and Community Development for the City of Twinsburg and have acted in that capacity since January 2005.
4. A portion of my duties and responsibilities with the City of Twinsburg include overseeing the Planning and Building Departments and advising City Council and the Planning Commission on matters related to planning and land use.
5. I am intimately familiar with §1101.01 through §1203.19 of the Codified Ordinances of the City of Twinsburg commonly known as the Twinsburg Zoning and Development Regulations.
6. In late 2011 the City of Twinsburg was confronted with the prospect of redeveloping the extremely large industrial site formerly occupied by the Chrysler Stamping Plant.
7. One of the recommendations I made to the Planning Commission was to amend §1149.09 of the Twinsburg Zoning and Development Regulations to allow for a standard cap of forty five (45) feet in the height of Industrial buildings in I-2 and I-3 districts which was the standard of modern Industrial buildings.
8. I referred the building height regulation to the City Planning Commission and was present at the Planning Commission meeting held on January 23, 2012 when the Twinsburg Planning Commission considered and recommended that City Council change §1149.09 to allow for buildings to be capped at forty five feet in height in I-2 and I-3 districts as set forth in Ordinance 97-2012.
9. I have reviewed the changes to §1149.09 as established by Ordinance 97-2012 and it is in my professional opinion that nothing therein changes the zoning classifications or districts or in the uses permitted in any zoning classification or district within the City of Twinsburg.

10. Prior to the adoption of Ordinance 97-2012, the height of buildings in an I-2 and I-3 district could exceed forty five (45) feet provided the applicant can meet the setback requirements.


Further Affiant sayeth naught.



Larry E. Finch

Sworn to before me and subscribed in my presence this 30th day of August,

2013.



Notary Public

SHANNON COLLINS
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Summit County
My Commission Expires
2/15/17

**CHAPTER 1149
INDUSTRIAL DISTRICTS**

- | | |
|---------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| 1149.01 I-1 INTENSIVE
COMMERCIAL AND LIGHT
INDUSTRIAL DISTRICT-
PURPOSE. | 1149.08 YARD AND BUILDING
SETBACK REQUIREMENTS-
INDUSTRIAL DISTRICTS. |
| 1149.02 I-1 PERMITTED USES. | 1149.09 HEIGHT REGULATIONS. |
| 1149.03 I-2 LIMITED DISTRICT -
PURPOSE. | 1149.10 INDUSTRIAL PERFORMANCE
STANDARDS. |
| 1149.04 I-2 PERMITTED USES. | 1149.11 MULTIPLE OCCUPANCY-
INDUSTRIAL DISTRICTS. |
| 1149.05 I-3 HEAVY INDUSTRIAL
DISTRICT. | 1149.12 DWELLINGS IN INDUSTRIAL
DISTRICTS. |
| 1149.06 I-3 PERMITTED USES. | 1149.13 ENTERTAINMENT
ESTABLISHMENTS |
| 1149.07 LOT AREA, WIDTH AND
COVERAGE REGULATIONS. | |

**1149.01 I-1 INTENSIVE COMMERCIAL AND LIGHT INDUSTRIAL DISTRICT-
PURPOSE.**

This district is established to provide for uses which provide sales and service in support of the primary business activities in the community. The district also provides for activities which, because of their nature generate increased traffic volumes, have substantial parking and storage demands, and other special characteristics which distinguish them from other commercial and industrial activities. (Ord. 87-1989. Passed 7-11-89)

1149.02 I-1 PERMITTED USES.

- A. Administrative and business offices.
- B. Automobile, truck, trailer, and farm implement sales and rental, service, and storage of new and used equipment.
- C. Fuel, food and goods distribution station but excluding coal and coke and bulk storage.
- D. Monument sale and display.
- E. Motor freight garage and offices but excluding warehousing.
- F. The following use when conducted not closer than fifty feet (50') of any residential district. Where the I-1 district abuts upon but is separated from the residential districts by a street, the width of the street may be considered as part of the required separation.
 - 1. Carpenter, cabinet, upholstering, sheet metal, plumbing, heating, roofing, air conditioning, sign painting, painting and other similar establishments.
 - 2. Laundry, cleaning and dyeing plant.
 - 3. Repair services for machinery and equipment, including repair garages and specialty establishments, such as motor, body and fender, radiator, motor tune-ups, muffler shops, tire repairing sales and service, including vulcanizing.
 - 4. Special trade contractors, building materials, and wholesalers.
- G. Plant greenhouse.

- H. Uses not listed herein and which are comparable in character to those types listed may be permitted by the Planning Commission.
- I. Signs: As regulated by Chapter 1173 of this Ordinance.
- J. Accessory uses clearly incidental to and customarily related to the primary permitted use. (Ord. 87-1989. Passed 7-11-89)

1149.03 I-2 LIMITED INDUSTRIAL DISTRICT - PURPOSE.

This district is established to provide for industrial uses that are compatible with one another. The district is regulated to be exclusively used for industrial purposes free from the encroachment of residential and commercial development. (Ord. 87-1989. Passed 7-11-89)

1149.04 I-2 PERMITTED USES.

- A. Uses enumerated in an I-1 Intensive Commercial and Light Industrial District (Sec. 1149.02) are permitted uses in an I-2 Limited Industrial District.
- B. Administrative and business offices.
- C. Warehousing, refrigerated and general storage.
- D. The manufacture, compounding, processing and assembling of products such as:
 1. Bakery goods, candy, cosmetics, pharmaceuticals, toiletries and food products, except fish or meat products, sauerkraut, yeast, rendering or refining of fats or oils.
 2. Electrical and electric appliances, instruments and devices, television, radio, phonograph, and household appliances.
 3. Laboratories and processing - experimental, film or testing provided no operations shall be conducted or equipment used which would create hazards, noxious or offensive conditions.
- E. Veterinarian hospital or clinic.
- F. Printing, publishing and allied industries.
- G. Professional, scientific, or control instruments and research laboratories.
- H. Banking facilities, restaurants, medical facilities, auditoriums, display rooms and classrooms, and the like, which are designed for the use of operators, employees and business visitors of a business, industry or use otherwise permitted in the district and which are used primarily for such purposes.
- I. Pottery and figurines, using previously pulverized clay, and kilns fired only-with gas or electricity.
- J. Musical instruments, toys, novelties, rubber or metal stamps, and other small rubber products.
- K. Electric and neon signs, billboards and other commercial advertising structures.
- L. Blacksmith, welding or other metal working shop.
- M. Carpenter, cabinet, upholstering, sheet metal, plumbing, heating, roofing, air conditioning, sign painting, painting and other similar establishments.
- N. Food and goods distribution station, warehouse and storage.
- O. Governmental storage garage and yards.
- P. Ice manufacturing and cold storage plant; creamery and bottling plant.
- Q. Laundry and cleaning plant.
- R. Plant greenhouse.
- S. Repair services for machinery and equipment including tire repairing, sales and service

including vulcanizing.

- T. Wholesale establishments.
- U. Entertainment establishments, subject to the criteria in Section 1149.13(C).
- V. Signs: As required by Chapter 1173 of this Ordinance.
- W. Accessory uses clearly incidental to and customarily related to the primary permitted use. (Ord. 109-2006, Passed 11-7-2006)

1149.05 I-3 HEAVY INDUSTRIAL DISTRICT PURPOSE.

This district is established to accommodate light and heavy industrial uses in the fields of repair, storage, manufacturing, processing, wholesaling, and distribution. The district is regulated to be exclusively used for industrial purposes, free from the encroachment of residential development, and free from the encroachment of commercial development except as permitted in Section 1149.06. The uses listed herein are intended to complete the full range of activities necessary in the functioning of the community.

(Ord. 87-1989. Passed 7-11-89)

1149.06 I-3 PERMITTED USES.

- A. Uses enumerated in an I-2 Limited Industrial District (Section 1149.04) are permitted uses in an I-3 Heavy Industrial District.
- B. Administrative and business offices.
- C. The manufacturing, compounding, processing and assembling of products such as:
Products from the following previously prepared materials: bone, canvas, cellophane, cloth, cork, feathers, fiber, fur, glass, hair, horn, leather, plastics, precious or semiprecious metals or stones, sheet metal, shell, textiles, tobacco, wax, wood (where saw and planing mills are employed within a completely enclosed building), yarns.
- D. Automobile assembly.
- E. Bag, carpet and rug cleaning, provided necessary equipment is installed and operated for the effective precipitation or recovery of dust or vapors.
- F. Boiler shops, machine shops, structural steel fabricating shops, railway car or locomotive shops, metal working shops employing reciprocating hammers and presses.
- G. Brewing or distilling of liquors.
- H. Cooperage works.
- I. Enameling, lacquering or japanning.
- J. Forge or foundry works.
- K. Foundry, casting light weight nonferrous metals, or electric foundry not causing noxious fumes or odors.
- L. Meat packing but not slaughtering of animals or stockyards.
- M. Sandblasting or cutting.
- N. Sewage disposal plant.
- O. Steam plant.
- P. Stone and monument works employing power driven tools.
- Q. Wire or rod drawing, nut screw or bolt manufacturing.
- R. Entertainment establishments, subject to the criteria in Section 1149.13(C).
- S. Signs: As regulated by Chapter 1173 of this Ordinance.
- T. Accessory uses clearly incidental to and customarily related to the primary permitted use. (Ord. 87-1989. Passed 7-11-89)

1149.07 LOT AREA, WIDTH AND COVERAGE REGULATIONS.

In all Industrial Districts, all buildings and land shall abut a dedicated street for the required lot width. The minimum lot area and width and maximum lot coverage shall be in accordance with the following schedule.

Schedule of Lot Area, Width and Coverage Regulations

District	Minimum Lot Area (Acres)	Minimum Lot Width (ft.)	Maximum Percent Lot Covered By Building
I-1	1	100	40
I-2	1.5	150	40
I-3	2	200	40

(Ord. 135-1991. Passed 7-11-89)

Each industrial lot shall abut upon a dedicated street for the required lot width, except that on a curved street or cul-de-sac, the width at the front lot line may be less, provided the lot width at the building setback line meets the required lot width of the particular district.

(Ord. 135-1991. Passed 11-2-91.)

1149.08 YARD AND BUILDING SETBACK REQUIREMENTS - INDUSTRIAL DISTRICTS.

In all Industrial Districts, buildings and parking shall be designed, erected, altered, moved and maintained, in whole or in part, only in accordance with the following schedule:

Zoning District	Main and Accessory Building and Use	Front Yard Street (From ROW) (ft.)	Side Yard Abutting Residential District(ft.)*	Side Yard Abutting Nonresidential Use (ft.)	Rear Yard Abutting Residential District(ft.)*	Rear Yard Abutting Nonresidential Use (ft.)
I-1 Intensive Industrial-Commercial and Light Building Industrial	Commercial	50	100	15	50	25
	Parking and Drives	50	25	5	25	5
I-2 Limited Industrial District	Industrial Building	100 Major thoroughfare 50	100	25	100	50
	Parking and Drives	Industrial street 50**	25	10	25	10
I-3 Heavy Industrial District	Industrial Building	100 Major thoroughfare 50	100	25	100	50

Parking and Drives	Industrial street 50**	25	10	25	10
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* The required side and rear yard setback areas abutting any residential districts shall be improved with landscape planting and/or walls and fences to screen the view from adjacent residential uses.

** The required parking setback area shall be improved with landscape planting and/or low (21/2 - 3') masonry walls to partially screen parked vehicles as viewed from the frontage street.

SIDE YARDS ON CORNER LOTS. Whenever an industrial building is located on a corner lot, the width of the building side yard on the side street shall be not less than 100 feet for major arterial streets and 35 feet for all other streets. On a corner lot, parking shall be set back a minimum of 20 feet from the side street right-of-way. (Ord. 87-1989. Passed 7-11-89)

1149.09 HEIGHT REGULATIONS.

The height of any main or accessory industrial building shall not exceed 35 feet. However, building height in an I-2 and I-3 district may exceed 35 feet provided the front and rear yard depth is increased two (2) feet for each additional foot of height over 35 feet and the side yard width is increased one (1) foot for each additional foot of height over 35 feet and a conditional use permit is approved. Maximum building height in an I-2 and I-3 Industrial District shall be recommended by the Mayor and Planning Commission and confirmed by City Council. (Ord. 87-1989. Passed 7-11-89)

1149.10 INDUSTRIAL PERFORMANCE STANDARDS.

All industrial uses shall comply with the performance standards set forth hereinafter for the district in which such use is located as a condition precedent to occupancy and use. Any use already established in such district shall not be altered, added to or otherwise modified so as to conflict with, or to further conflict with, the performance standards set forth hereinafter for the district in which such use is located as a condition precedent to further use. Statements that such uses comply or will comply may be required, in writing, by the Planning Commission from the owner. In cases of doubt, the City shall select and arrange for an independent survey by a professional engineer qualified in the particular field and the costs for the services shall be paid by the owner.

A. Enclosure. All permitted main and accessory uses and operations, except off-street parking, shall be performed wholly within an enclosed building or buildings. All raw materials, finished products and mobile and other equipment shall be stored within enclosed buildings.

B. Fire and Explosive Hazards. The storage, handling and use of flammable or explosive materials shall be permitted only in structures having incombustible exterior walls, and all operations in connection therewith shall be provided with adequate safety and protective devices against hazards of fire and explosion as well as with adequate firefighting and suppression equipment and devices standard to the operation involved.

C. Dust; Smoke. The emission of smoke, soot, fly ash, fumes, dust and other types of air pollution borne by the wind shall be controlled so that the rate of emission and the quantity deposited at any adjacent lot shall not be detrimental to or endanger the public health, safety, comfort or welfare or adversely affect property values.

D. Odorous Matter. The emission of odorous matter in such quantities as to produce a public

nuisance or hazard beyond the lot occupied by the use shall not be permitted.

E. Toxic or Noxious Matter. The emission of toxic, noxious or corrosive fumes or gases which would be demonstrably injurious to property, vegetation, animals or human health at or beyond the boundaries of the lot occupied by the use shall not be permitted.

F. Noise. The sound pressure level of any operation on a lot, other than the operation of speakers, bells and motor vehicles, shall not exceed the average intensity of the street traffic noise of the district, and no sound shall be objectionable due to intermittence, beat frequency or shrillness.

G. Vibration. Vibrations shall not be permitted beyond the lot line occupied by the use which would be perceptible without the aid of instruments.

H. Radioactive or Electrical Disturbances. Radioactive or electrical disturbances shall not be created which would adversely affect any form of life or equipment at or beyond the boundaries of the lot occupied by the use.

I. Incineration Facilities. Incineration facilities emitting neither smoke nor odor shall be provided, located within the main building. No garbage, rubbish, waste matter or empty containers shall be permitted outside of buildings.

J. Waste Materials: Liquid wastes shall not be discharged in to an open reservoir, stream or other open body of water, or into a sewer, unless treated or controlled so that the amount of solid substances, oils, grease, acids, alkalines and other chemicals shall not exceed the amount permitted by other codes of the State, County or City. Solid wastes shall not be buried unless such method is approved by the Ohio EPA and a Permit to Install (PTI) has been issued. (Ord. 87-1989. Passed 7-11-89)

1149.11 MULTIPLE OCCUPANCY - INDUSTRIAL DISTRICTS.

In any Industrial District, the Planning Commission may allow multiple occupancy on an industrial zoning lot as a conditional use provided that the Commission finds and determines that:

- A. Each multiple occupancy is an industrial use permitted in the respective industrial district;
- B. The multiple occupancy occurs upon a single industrial zoning lot;
- C. The structures and improvements, and lot containing the multiple occupancy meet all the area, yard and height requirements of the respective industrial district;
- D. Each use upon the multiple occupancy zoning lot and all uses in combination thereon meet the performance standards set forth in Section 1149.10 of the Zoning Ordinance and the applicable standards for conditional uses set forth in Chapter 1151 of this Zoning Ordinance; and
- E. Any change in occupancy is consistent with and in compliance with an approved development plan for the zoning lot. (Ord. 87-1989. Passed 7-11-89)

1149.12 DWELLINGS IN INDUSTRIAL DISTRICTS.

No dwelling unit shall be erected in any I-1, I-2 or I-3 zoning district.
(Ord. 87-1989. Passed 7-11-89)

1149.13 ENTERTAINMENT ESTABLISHMENTS

A. Purpose. It is the purpose of this Section to regulate Entertainment Establishments in order to promote the health, safety, moral, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of Entertainment Establishments within the City. The provisions of this Section have neither the purpose nor effect

of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Section to condone or legitimize the distribution of obscene material.

B. Findings and Rationale. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Planning Commission and City Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's A.M v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime*

Theatres, Inc., 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); and *Deja Vu of Cincinnati, Inc. v. Union Township, Ohio*, 411 F.3d 777 (6th Cir. 2005); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Brandywine, Inc. v. City of Richmond*, 359 F.3d 830 (6th Cir. 2004); *Currence v. City of Cincinnati*, 28 Fed. Appx. 438 (6th Cir. 2002); *Broadway Books v. Roberts*, 642 F.Supp. 486 (E.D. Tenn. 1986); *Bright Lights, Inc. v. City of Newport*, 830 F.Supp. 378 (E.D. Ky. 1993); *RichlandBookmart v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Deja vu v. Metro Government*, 1999 U.S. App. LEXIS 535 (6th Cir. Jan. 13, 1999); *Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991); *Triplett Grille, Inc. v. City of Akron*, 40 F.3d 129 (6th Cir. 1994); *State v. Ullman*, 2003-Ohio-4003; *State ex. rel. Nasal v. BJS No.2, Inc.*, 127 Ohio Misc.2d 101 (2003) *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990); *Deja vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County*, 274 F.3d 377 (6th Cir. 2001); *Z.J Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Threesome Entertainment v. Strittmather*, 4 F.Supp.2d 710 (N.D. Ohio 1998); *Bigg Wolf Discount Video Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Kentucky Restaurant Concepts, Inc. v. City of Louisville and Jefferson County*, 209 F.Supp.2d 672 (W.D. Ky. 2002); *Lady J Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *Restaurant Ventures v. Lexington-Fayette Urban County Gov't*, 60 S.W.3d 572 (Ct. App. Ky. 2001); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (6th Cir. 2003); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983; Phoenix, Arizona - 1979; Chattanooga, Tennessee - 1999-2003; Minneapolis, Minnesota - 1980; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the City Council finds:

1. Entertainment Establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
2. Entertainment Establishments should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
3. Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City's rationale for this ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented establishments. Additionally, the City's interest in regulating Entertainment Establishments extends to preventing future secondary effects of either current or future Entertainment Establishments that may locate in the City. The City finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

C. Criteria. Entertainment Establishments shall be a Permitted Use in the Limited I Industrial District (1-2) and Heavy Industrial District (1-3), subject to the following:

1. No Entertainment Establishment shall be established within 500 feet of:
 - (a) any "R" District" including an R-2 Residential District, an R-3 Residential District, an R-4 Residential District, a R-5 Single Family Cluster District, an R-6 Apartment District, an R- 7 Senior Residence District, or an R-8 Two Family District, as shown on the Official Zoning Map of the City.
 - (b) a PUD Planned Unit Development District as shown on the Official Zoning Map of the City; or,
 - (c) any non-conforming residential dwelling.
2. No Entertainment Establishment shall be established within 500 feet of any school or pre-school, library, daycare facility or teaching facility, whether public or private.
3. No Entertainment Establishment shall be established within 500 feet of any residential care facility.
4. No Entertainment Establishment shall be established within 500 feet of any Public Facilities District (PF).

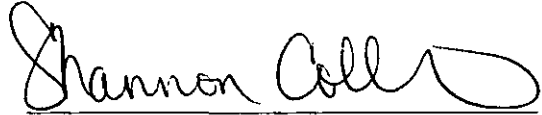
5. No Entertainment Establishment shall be established within 500 feet of any church, synagogue, or worship facility.
6. No Entertainment Establishment shall be established within 500 feet of any other Entertainment Establishment.
7. Lighting on the exterior of the building shall be arranged so as to illuminate the entire off-street parking area with sufficient intensity to provide illumination of not less than two (2.0) foot candles as measured at the floor level.
8. The distances as cited in this Section above shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the property line of the property on which the proposed Entertainment Establishment is to be established, to the nearest point of the property or zoning district line from which the proposed Entertainment Establishment is to be separated. (Ord. 109-2006, Passed 11-7-2006)

STATE OF OHIO)
)
CITY OF TWINSBURG)
COUNTY OF SUMMIT)

CERTIFICATION

I, SHANNON COLLINS, do hereby certify that I am the duly appointed, qualified Clerk of Council of the City of Twinsburg, Ohio, and that the attached is a true and exact copy of the Zoning & Development Regulations, Chapter 1149 and such REGULATIONS are of record with the City of Twinsburg, Ohio.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of the City of Twinsburg, this 30th day of August, 2013.



Shannon Collins
Clerk of Council

**CHAPTER 1201
AMENDMENTS**

1201.01 AUTHORITY AND PROCEDURE.

1201.01 AUTHORITY AND PROCEDURE.

- A. The Council may from time to time on its own motion or on petition, after public notice and hearing, amend or change the regulations, districts or, building lines herein established, but no such amendment or change shall be effective unless the ordinance or petition proposing such amendment or change shall first be submitted to the Municipal Planning Commission for approval, disapproval or suggestions, and the Planning Commission shall have been allowed a reasonable time, not more than sixty days, for consideration and report.
- B. Whoever petitions the Council for a change in zoning, such petitioner shall deposit with the Director of Finance, a fee which is prescribed elsewhere by ordinance, payable to the City of Twinsburg from which the costs of legal notices, Planning Commission expense and engineer's fees shall be paid. If the required deposit is insufficient, the Council shall require the petitioner to pay the additional amount as a condition of approval. This fee shall not apply to any amendment introduced by a member of Council, the Mayor, Planning Commission or Board of Zoning and Building Code Appeals, acting in an official capacity.
- C. The Council shall hold a public hearing before the adoption of the proposed amendment. At least thirty (30) days notice of such amendment, and of the time and place of the hearing thereon, shall be given in a newspaper of general circulation, which shall include a statement that opportunity will be afforded to any person interested to be heard.

If the amendment intends to re-zone or re-district ten (10) or less parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed, by first class mail, at least twenty (20) days before the date of the public hearing, to the owners of property within and contiguous to and directly across the street from such parcel or parcels, at the addresses given on the last assessment roll. The failure of delivery of any such notice shall not invalidate any such amendment.

- D. In the event the City Council should approve any of the preceding changes, whether approved or disapproved by the Planning Commission, it shall not be approved or passed by the declaration of an emergency, and it shall not be effective, but it shall be mandatory that the same be approved by a majority vote of all votes cast of the qualified electors of the City of Twinsburg and of each ward in which the property so changed is located at the next general election or at a special election falling on the generally established day of the primary election. Said issue shall be submitted to the electors of the City only after approval of a change in zoning classifications or districts, or in the uses permitted in any zoning use classifications or districts by the Council for an applicant.


Ord. 173-2000. Passed 12-17-2000)

STATE OF OHIO)
)
CITY OF TWINSBURG)
COUNTY OF SUMMIT)

CERTIFICATION

I, SHANNON COLLINS, do hereby certify that I am the duly appointed, qualified Clerk of Council of the City of Twinsburg, Ohio, and that the attached is a true and exact copy of the Zoning & Development Regulations, Chapter 1201 and such REGULATIONS are of record with the City of Twinsburg, Ohio.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of the City of Twinsburg, this 30th day of August, 2013.


Shannon Collins
Clerk of Council