

**ORDINANCE #1128**

AN ORDINANCE OF THE CITY OF LANSING, MICHIGAN, TO AMEND CHAPTER 1240, SECTIONS 1240.04, OF THE LANSING CODIFIED ORDINANCES TO PERMIT A LAND OWNER TO OFFER SPECIFIC LAND USE CONDITIONS AS A CONDITION OF REZONING PURSUANT TO THE MICHIGAN ZONING ENABLING ACT, MCL § 125.3405.

THE CITY OF LANSING ORDAINS:

Section 1. That Chapter 1240, Section 1240.04, of the Codified Ordinances of the City of Lansing, Michigan, be and is hereby amended to read as follows:

(a) An application to amend, supplement or change the regulations and boundaries of zoning districts may be made by any of the following persons:

- (1) A person having a legal or equitable interest in the property;
- (2) The authorized representative of a person having a legal or equitable interest in the property; or
- (3) Council.

(b) The application described in subsection (a) hereof shall be made on forms provided by the Planning Division and shall be filed with the City Clerk and accompanied by the fees required by Council.

(c) Within one day after receipt of the application, the City Clerk shall refer the application to the Planning Board. Simultaneously, the City Clerk shall place the application on the agenda for the next Council meeting.

(d) After the City Clerk refers the application to the Board, the Board shall hold not less than one public hearing before submitting a final report to Council and shall provide notice of the public hearing as described in subsection (e) hereof.

(e) Not less than 15 days notice of the time and place of the public hearing described in this subsection shall first be published in an official paper or a paper of general circulation in the City. In addition, not less than 15 days notice of the time and place of the public hearing shall be given by mail to each public utility company and to each railroad company owning or operating any public utility or railroad within the districts or zones affected, if the public utility company or railroad registers its name and mailing address with the City Clerk for the purpose of receiving the notice. An affidavit of mailing shall be maintained by the Planning Division. In addition, the Planning Division shall provide not less than 15 days notice of a public hearing on a proposed amendment to a zoning district boundary to the owner of the property in question, as represented on the tax records held in the office of the City Assessor. A hearing shall be granted an interested person at the time and place specified on the notice.

(F) CONDITIONAL REZONING

- (1) INTENT.

IT IS RECOGNIZED THAT THERE ARE CERTAIN INSTANCES WHEN IT WOULD BE IN THE BEST INTERESTS OF THE CITY, AS WELL AS ADVANTAGEOUS TO LAND OWNERS SEEKING A CHANGE IN ZONING BOUNDARIES, IF SPECIFIC CONDITIONS WERE TO BE PROPOSED BY THE LAND OWNER AS PART OF A REQUEST FOR A REZONING. IT IS THE INTENT OF THIS SECTION TO PROVIDE A PROCESS CONSISTENT WITH MCL § 125.3405 BY WHICH A LANDOWNER SEEKING A REZONING MAY VOLUNTARILY PROPOSE CONDITIONS REGARDING THE USE AND/OR DEVELOPMENT OF LAND AS PART OF THE REZONING REQUEST.

(2) APPLICATION AND OFFER OF CONDITIONS.

- (a) A LAND OWNER OR A LANDOWNER'S AGENT MAY VOLUNTARILY OFFER IN WRITING CONDITIONS RELATING TO THE USE AND/OR DEVELOPMENT OF LAND FOR WHICH A REZONING IS REQUESTED. THIS OFFER MAY BE MADE EITHER AT THE TIME THE APPLICATION FOR REZONING IS FILED OR AT A LATER TIME DURING THE REZONING PROCESS.
- (b) THE REQUIRED APPLICATION AND PROCESS FOR CONSIDERING A REZONING REQUEST WITH CONDITIONS SHALL BE THE SAME AS THAT FOR CONSIDERING REZONING REQUESTS MADE WITHOUT ANY OFFER OF CONDITIONS, EXCEPT AS MODIFIED BY THE REQUIREMENTS OF THIS SECTION.
- (c) THE LAND OWNER'S OFFER OF CONDITIONS MAY NOT PURPORT TO AUTHORIZE USES OR DEVELOPMENTS NOT PERMITTED IN THE REQUESTED NEW ZONING DISTRICT.
- (d) ANY USE OR DEVELOPMENT PROPOSED AS PART OF AN OFFER OF CONDITIONS THAT WOULD REQUIRE A SPECIAL LAND USE PERMIT UNDER THE TERMS OF THIS ORDINANCE MAY ONLY BE COMMENCED IF A SPECIAL LAND USE PERMIT FOR SUCH USE OR DEVELOPMENT IS ULTIMATELY GRANTED IN ACCORDANCE WITH THE PROVISIONS OF THIS ORDINANCE.
- (e) ANY USE OR DEVELOPMENT PROPOSED AS PART OF AN OFFER OF CONDITIONS THAT WOULD REQUIRE A VARIANCE UNDER THE TERMS OF THIS ORDINANCE MAY ONLY BE COMMENCED IF A VARIANCE FOR SUCH USE OR DEVELOPMENT IS ULTIMATELY GRANTED BY THE ZONING BOARD OF APPEALS IN ACCORDANCE WITH THE PROVISIONS OF THIS ORDINANCE.

- (f) ANY USE OR DEVELOPMENT PROPOSED AS PART OF AN OFFER OF CONDITIONS THAT WOULD REQUIRE SITE PLAN APPROVAL UNDER THE TERMS OF THIS ORDINANCE MAY ONLY BE COMMENCED IF SITE PLAN APPROVAL FOR SUCH USE OR DEVELOPMENT IS ULTIMATELY GRANTED IN ACCORDANCE WITH THE PROVISIONS OF THIS ORDINANCE.
- (g) THE OFFER OF CONDITIONS MAY BE AMENDED DURING THE PROCESS OF REZONING CONSIDERATION PROVIDED THAT ANY AMENDED OR ADDITIONAL CONDITIONS ARE OFFERED VOLUNTARILY BY THE OWNER. AN OWNER MAY WITHDRAW ALL OR PART OF ITS OFFER OF CONDITIONS ANY TIME PRIOR TO FINAL REZONING ACTION OF THE CITY COUNCIL PROVIDED THAT, IF SUCH WITHDRAWAL OCCURS SUBSEQUENT TO THE PLANNING BOARD'S PUBLIC HEARING ON THE ORIGINAL REZONING REQUEST, THEN THE REZONING APPLICATION SHALL BE REFERRED TO THE PLANNING BOARD FOR A NEW PUBLIC HEARING WITH APPROPRIATE NOTICE AND A NEW RECOMMENDATION.

(3) PLANNING BOARD REVIEW.

THE PLANNING BOARD, AFTER PUBLIC HEARING AND CONSIDERATION OF THE FACTORS FOR REZONING SET FORTH IN THIS ORDINANCE, MAY RECOMMEND APPROVAL, APPROVAL WITH RECOMMENDED CHANGES OR DENIAL OF THE REZONING; PROVIDED, HOWEVER, THAT ANY RECOMMENDED CHANGES TO THE OFFER OF CONDITIONS ARE ACCEPTABLE TO AND THEREAFTER OFFERED BY THE LAND OWNER.

(4) CITY COUNCIL REVIEW.

AFTER RECEIPT OF THE PLANNING BOARD'S RECOMMENDATION, THE CITY COUNCIL SHALL DELIBERATE UPON THE REQUESTED REZONING AND MAY APPROVE OR DENY THE CONDITIONAL REZONING REQUEST. THE CITY COUNCIL'S DELIBERATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO A CONSIDERATION OF THE FACTORS FOR REZONING SET FORTH IN THIS ORDINANCE.

(5) APPROVAL.

- (a) IF CITY COUNCIL FINDS THE REZONING REQUEST AND OFFER OF CONDITIONS ACCEPTABLE, THE OFFERED CONDITIONS SHALL BE INCORPORATED INTO A FORMAL WRITTEN STATEMENT OF CONDITIONS ACCEPTABLE TO THE LAND OWNER AND CONFORMING IN FORM TO THE PROVISIONS OF THIS ORDINANCE. THE STATEMENT OF CONDITIONS SHALL BE INCORPORATED BY ATTACHMENT OR OTHERWISE AS AN INSEPARABLE PART OF THE

ORDINANCE ADOPTED BY CITY COUNCIL TO ACCOMPLISH THE REQUESTED REZONING.

- (b) THE STATEMENT OF CONDITIONS SHALL:
    - (1) CONTAIN A LEGAL DESCRIPTION OF THE LAND TO WHICH IT PERTAINS.
    - (2) CONTAIN A STATEMENT ACKNOWLEDGING THAT THE STATEMENT OF CONDITIONS RUNS WITH THE LAND AND IS BINDING UPON SUCCESSOR OWNERS OF THE LAND.
    - (3) INCORPORATE BY ATTACHMENT OR REFERENCE ANY DIAGRAM, PLANS OR OTHER DOCUMENTS SUBMITTED OR APPROVED BY THE LAND OWNER THAT ARE NECESSARY TO ILLUSTRATE THE IMPLEMENTATION OF THE STATEMENT OF CONDITIONS. IF ANY SUCH DOCUMENTS ARE INCORPORATED BY REFERENCE, THE REFERENCE SHALL SPECIFY WHERE THE DOCUMENT MAY BE EXAMINED.
    - (4) CONTAIN THE NOTARIZED SIGNATURES OF ALL OF THE LAND OWNERS OF THE SUBJECT LAND PRECEDED BY A STATEMENT ATTESTING TO THE FACT THAT THEY VOLUNTARILY OFFER AND CONSENT TO THE PROVISIONS CONTAINED WITHIN THE STATEMENT OF CONDITIONS.
  - (c) UPON THE REZONING TAKING EFFECT, THE ZONING MAP SHALL BE AMENDED TO REFLECT THE NEW ZONING CLASSIFICATION ALONG WITH A DESIGNATION THAT THE LAND WAS REZONED WITH A STATEMENT OF CONDITIONS. THE CITY CLERK SHALL MAINTAIN A LISTING OF ALL LANDS REZONED WITH A STATEMENT OF CONDITIONS.
  - (d) THE CITY COUNCIL SHALL HAVE AUTHORITY TO REQUIRE THAT THE STATEMENT OF CONDITIONS BE RECORDED WITH THE REGISTER OF DEEDS IF IT DETERMINES THAT, GIVEN THE NATURE OF THE CONDITIONS, THE RECORDING OF SUCH A DOCUMENT WOULD BE OF MATERIAL BENEFIT TO THE CITY OR TO ANY SUBSEQUENT OWNER OF THE LAND.
  - (e) UPON THE REZONING TAKING EFFECT, THE USE OF THE LAND SO REZONED SHALL CONFORM THEREAFTER TO ALL OF THE REQUIREMENTS REGULATING ITS USE AND DEVELOPMENT AS CONTAINED IN THE STATEMENT OF CONDITIONS.
- (6) COMPLIANCE WITH CONDITIONS.

- (a) ANY PERSON WHO ESTABLISHES A DEVELOPMENT OR COMMENCES A USE UPON LAND THAT HAS BEEN REZONED WITH CONDITIONS SHALL CONTINUOUSLY OPERATE AND MAINTAIN THE DEVELOPMENT OR USE IN COMPLIANCE WITH ALL OF THE CONDITIONS SET FORTH IN THE STATEMENT OF CONDITIONS. ANY FAILURE TO COMPLY WITH A CONDITION CONTAINED WITHIN THE STATEMENT OF CONDITIONS SHALL CONSTITUTE A VIOLATION OF THIS ZONING ORDINANCE AND BE PUNISHABLE ACCORDINGLY. ADDITIONALLY, ANY SUCH VIOLATION SHALL BE DEEMED A NUISANCE PER SE AND SUBJECT TO JUDICIAL ABATEMENT AS PROVIDED BY LAW.
  - (b) NO PERMIT OR APPROVAL SHALL BE GRANTED UNDER THIS ORDINANCE FOR ANY USE OR DEVELOPMENT THAT IS CONTRARY TO A STATEMENT OF CONDITIONS.
- (7) TIME PERIOD FOR ESTABLISHING DEVELOPMENT OR USE.

UNLESS ANOTHER TIME PERIOD IS SPECIFIED IN THE ORDINANCE REZONING THE SUBJECT LAND, THE APPROVED DEVELOPMENT AND/OR USE OF THE LAND PURSUANT TO BUILDING AND OTHER REQUIRED PERMITS MUST BE COMMENCED UPON THE LAND WITHIN 18 MONTHS (OR SHORTER IF SPECIFIED) AFTER THE REZONING TAKES EFFECT AND THEREAFTER PROCEED DILIGENTLY TO COMPLETION. THIS TIME LIMITATION MAY, UPON WRITTEN REQUEST, BE EXTENDED BY THE CITY COUNCIL IF: (1) IT IS DEMONSTRATED TO THE CITY COUNCIL'S SATISFACTION THAT THERE IS A STRONG LIKELIHOOD THAT THE DEVELOPMENT AND/OR USE WILL COMMENCE WITHIN THE PERIOD OF EXTENSION AND PROCEED DILIGENTLY THEREAFTER TO COMPLETION AND (2) THE CITY COUNCIL FINDS THAT THERE HAS NOT BEEN A CHANGE IN CIRCUMSTANCES THAT WOULD RENDER THE ZONING WITH STATEMENT OF CONDITIONS INCOMPATIBLE WITH OTHER ZONES AND USES IN THE SURROUNDING AREA OR OTHERWISE RENDERS IT INCONSISTENT WITH ZONING POLICY.

- (8) REVERSION OF ZONING.

IF APPROVED DEVELOPMENT AND/OR USE OF THE REZONED LAND DOES NOT OCCUR WITHIN THE TIME FRAME SPECIFIED UNDER SUBSECTION 7 ABOVE, THEN THE LAND SHALL REVERT TO ITS FORMER ZONING CLASSIFICATION AS SET FORTH IN MCL § 125.3405.

- (9) SUBSEQUENT REZONING OF LAND.

WHEN LAND THAT IS REZONED WITH A STATEMENT OF CONDITIONS IS THEREAFTER REZONED TO A DIFFERENT ZONING

CLASSIFICATION OR TO THE SAME ZONING CLASSIFICATION BUT WITH A DIFFERENT OR NO STATEMENT OF CONDITIONS, WHETHER AS A RESULT OF A REVERSION OF ZONING OR OTHERWISE, THE STATEMENT OF CONDITIONS IMPOSED UNDER THE FORMER ZONING CLASSIFICATION SHALL CEASE TO BE IN EFFECT. UPON THE LAND OWNER'S WRITTEN REQUEST, THE CITY CLERK SHALL RECORD WITH THE REGISTER OF DEEDS A NOTICE THAT THE STATEMENT OF CONDITIONS IS NO LONGER IN EFFECT.

(10) AMENDMENT OF CONDITIONS WHEN EXTENSION REQUESTED.

IF A CONDITIONAL ZONING HAS BEEN APPROVED AND THE APPLICANT REQUESTS AN EXTENSION OF TIME FOR COMMENCEMENT OF THE DEVELOPMENT, THE CITY COUNCIL MAY ADD TO, DELETE OR MODIFY THE CONDITIONS IN THE PREVIOUSLY APPROVED STATEMENT OF CONDITIONS AS PART OF ITS DECISION TO GRANT THE REQUESTED EXTENSION SO LONG AS THE CHANGES ARE PROPOSED BY THE DEVELOPER.

(11) CITY'S RIGHT TO REZONE.

NOTHING IN THE STATEMENT OF CONDITIONS NOR IN THE PROVISIONS OF THIS SECTION SHALL BE DEEMED TO PROHIBIT THE CITY FROM REZONING ALL OR ANY PORTION OF LAND THAT IS SUBJECT TO A STATEMENT OF CONDITIONS TO ANOTHER ZONING CLASSIFICATION. ANY REZONING SHALL BE CONDUCTED IN COMPLIANCE WITH CITY ORDINANCES AND CITY CHARTER.

(12) FAILURE TO OFFER CONDITIONS.

THE CITY SHALL NOT REQUIRE A LAND OWNER TO OFFER CONDITIONS AS A REQUIREMENT FOR REZONING. THE LACK OF AN OFFER OF CONDITIONS SHALL NOT AFFECT A LAND OWNER'S RIGHTS UNDER THIS ORDINANCE.

(f-G) After the public hearing described in subsection (d) hereof, the Board shall make its final report to Council. A summary of the comments submitted at the public hearing shall be transmitted with the report of the Board to Council. Council shall hold at least one public hearing and shall provide notice of a public hearing as described in subsection (e) hereof.

(g H) Council shall not determine the boundaries of districts nor impose regulations until after the final report of the Board, nor shall this Zoning Code or the maps be amended after they are adopted in the first instance until the proposed amendment has been submitted to the Board and it has held at least one hearing and made a report. In either case, Council may adopt the ordinance and maps, with or without amendments, after receipt of the Board's report, or refer this Zoning Code and maps again to the Board for a further report.

(h I) Upon presentation of a protest petition meeting the requirements of this

subsection, an amendment to this Zoning Code which is the object of the petition shall be passed only by a two-thirds vote of Council. The protest petition shall be presented to Council before final legislative action on the amendment, and shall be signed by one of the following:

- (1) The owners of at least 20 percent of the area of land included in the proposed change; or
  - (2) The owners of at least 20 percent of the area of land included within an area extending outward 100 feet from any point on the boundary of the land included in the proposed change.
- (i J) For purposes of subsection (h) hereof, publicly owned land shall be excluded in calculating the 20 percent land area requirement.
- (j K) Following the adoption of this Zoning Code and following the adoption of subsequent amendments to this Zoning Code by Council, one notice of adoption shall be published by the City Clerk in a newspaper of general circulation in the City within 15 days after adoption. The notice shall include the following information:
- (1) In the case of a newly adopted zoning ordinance, the following statement: "A zoning ordinance regulating the development and use of land has been adopted by Council;"
  - (2) In the case of an amendment to an existing ordinance, either a summary of the regulatory effect of the amendment, including the geographic area affected, or the text of the amendment;
  - (3) The effective date of the ordinance; and
  - (4) The place and time where a copy of the ordinance may be purchased or inspected.

Section 2. All ordinances, resolutions or rules, parts of ordinances, resolutions or rules inconsistent with the provisions hereof are hereby repealed.

Section 3. Should any section, clause or phrase of this ordinance be declared to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof other than the part so declared to be invalid.

Section 4. This ordinance shall take effect on the 30th day after enactment unless given immediate effect by City Council.