

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI
ORDINANCE NO. 03-____

TEXT AMENDMENT TO ZONING ORDINANCE

(Planned Rezoning Overlay)

AN ORDINANCE TO AMEND THE CITY OF NOVI ZONING ORDINANCE, AS PREVIOUSLY AMENDED, FOR THE PURPOSE OF PROVIDING A PROCEDURE AND STANDARDS FOR ALLOWING A PROPERTY OWNER TO PROPOSE, AND ALLOWING THE CITY TO APPROVE, A SITE SPECIFIC DEVELOPMENT, INCLUDING CONDITIONS, IN CONJUNCTION WITH A PROPOSED REZONING.

THE CITY OF NOVI ORDAINS:

Part I. That Appendix A of the City of Novi Code of Ordinances, Ordinance 97-18, as amended, Article 34, "Amendments to Ordinances," is hereby amended by categorizing the current language of such Article as Section 3401, entitled "Procedure," and adding a new Section 3402, entitled "Planned Rezoning Overlay," all reading as follows upon the effective date of this amendment:

ARTICLE 34: AMENDMENTS TO ORDINANCE

Section 3401. Procedure

The City Council may, from time to time, on recommendation from the Planning Commission or on Petition, amend, supplement or change the District Boundaries or the regulations herein, pursuant to the authority and procedure established in Act 207 of the Public Acts of 1921 [MCL 125.581 et seq., MSA 5.2931 et seq.], as amended.

Section 3402. Planned Rezoning Overlay (PRO)

A. Intent

The Planning Commission and City Council have recognized that, in certain instances, it would be an advantage to both the City and to property owners seeking

Rezoning if a site plan, along with conditions and limitations that may be relied upon by the City, could be proposed as part of a petition for Rezoning. Therefore, it is the intent of this Section to provide an election to property owners in connection with the submission of petitions seeking the amendment of this Ordinance for approval of a Rezoning with Planned Rezoning Overlay that would establish a site specific use authorization under MCL 125.584b, so as to accomplish, among other things, the objectives of the zoning ordinance through a land development project review process based upon the application of site planning criteria to achieve integration of the proposed land development project with the characteristics of the project area.

B. Definitions

The following definitions shall apply in the interpretation of this Section:

Applicant shall mean the property owner, or a person acting with the written and signed authorization of the property owner to make application under this Section.

Planned Rezoning Overlay Conditions shall mean conditions proposed by the applicant and approved by the City as part of an approval under this Section, including review and recommendation by the Planning Commission, which shall constitute regulations for and in connection with the development and use of property approved with a Planned Rezoning Overlay in conjunction with a Rezoning. Such Planned Rezoning Overlay Conditions shall not authorize uses or development not permitted in the district proposed by the Rezoning (and shall not permit uses or development expressly or implicitly prohibited in the PRO Agreement), and may include some or all of the following, in addition to conditions imposed by the City under MCL 125.584c:

1. The location, size, height or other measure for and/or of buildings, structures, improvements, set backs, landscaping, buffers, design, architecture and other features shown on the PRO Plan.
2. Specification of maximum density or intensity of development and/or use, expressed in terms fashioned for the particular development and/or use, for example, and in no respect by way of limitation, units per acre, maximum usable floor area, hours of operation, and the like.
3. Preservation of natural resources and/or features.
4. Facilities to address drainage/water quality.
5. Facilities to address traffic issues.
6. Preservation of open space.

7. A written understanding for permanent maintenance of natural resources, features, and/or facilities to address drainage/water quality, traffic, open space and/or other features or improvements; and, provision for authorization and finance of maintenance by or on behalf of the City in the event the property owner(s) fail(s) to timely perform after notice.
8. Other provisions proposed by the applicant and approved by the City.
9. Signage, lighting, landscaping, building materials for the exterior of some or all structures.
10. Permissible uses of the property.

PRO Agreement shall mean a written agreement approved and executed by the City and property owner, incorporating a PRO Plan, and setting forth Planned Rezoning Overlay Conditions, conditions imposed pursuant to MCL 125.584c₂, and any other terms mutually agreed upon by the parties relative to land for which the City has approved a Rezoning with Planned Rezoning Overlay. Mutually agreeable terms may include the following:

1. Agreement and acknowledgment that the Rezoning with Planned Rezoning Overlay was proposed by the applicant to induce the City to grant the Rezoning, and that the City relied upon such proposal and would not have granted the Rezoning but for the terms spelled out in the PRO Agreement; and, further agreement and acknowledgment that the conditions and PRO Agreement are authorized by all applicable state and federal law and constitution, and that the Agreement is valid and was entered into on a voluntary basis, and represents a permissible exercise of authority by the City.
2. Agreement and understanding that the property in question shall not be developed or used in a manner inconsistent with the PRO Plan and PRO Agreement.
3. Agreement and understanding that the approval and PRO Agreement shall be binding upon and inure to the benefit of the property owner and City, and their respective heirs, successors, assigns, and transferees.
4. Agreement and understanding that, if a Rezoning with Planned Rezoning Overlay becomes void in the manner provided in this Section 3402, no development shall be undertaken or permits for development issued until a new zoning district classification of the property has been established.
5. Agreement and understanding that each of the requirements and conditions in the PRO Agreement represents a necessary and reasonable measure which, when considered with all other conditions and requirements, is roughly proportional to the increased impact created by the use represented in the approved Rezoning with Planned Rezoning Overlay, taking into consideration the changed zoning district classification and the specific use authorization granted.

PRO Plan shall mean a plan of the property which is the subject of a Rezoning with Planned Rezoning Overlay, prepared by a licensed civil engineer or architect, that may show the location, size, height, design, architecture or other measure or feature for and/or of buildings, structures, improvements and features on, and in some cases adjacent to, the property. The details to be offered for inclusion within the PRO Plan shall be determined by the applicant, subject to approval of the City Council after recommendation by the Planning Commission.

Rezoning shall mean the amendment of this Ordinance to change the zoning map classification on property from its existing district to a new district classification.

C. Authorization and Eligibility

1. A property owner shall have the option of making an election under this Section 3402 in connection with a submission of a petition seeking a Rezoning. Such election may be made at the time the application for Rezoning is filed, or at a subsequent point in the process of review of the proposed Rezoning. The election shall be made by filing an application conforming with this Section for approval of a Planned Rezoning Overlay that would establish a site-specific use authorization if the petition for Rezoning is granted. Such election shall be to seek a *Rezoning with Planned Rezoning Overlay* pursuant to MCL 125.584b, which would represent a legislative amendment of the Zoning Ordinance.
2. In order to be eligible for the proposal and review of a Rezoning with Planned Rezoning Overlay, a property owner must propose a Rezoning of property to a new zoning district classification, and must, as part of such proposal, voluntarily offer certain site-specific regulations (to be set forth on a PRO Plan and in a PRO Agreement to be prepared) which are, in material respects, more strict or limiting than the regulations that would apply to the land under the proposed new zoning district, including such regulations as set forth in sub-paragraphs (1) through (10) of the definition of “Planned Rezoning Overlay Conditions”, above.

D. Approval of Rezoning with Planned Rezoning Overlay

1. Pursuant to MCL 125.584b, the City Council, following public hearing at and recommendation by the Planning Commission, may approve a petition for a Rezoning with a Planned Rezoning Overlay requested by a property owner.
 - a. As an integral part of the Planned Rezoning Overlay, the following shall be reviewed and may be approved:
 - i. A PRO Plan, with such detail and inclusions proposed by the applicant and approved by the City Council in accordance with this Section, following recommendation by the Planning

Commission. The PRO Plan shall not replace the requirement for preliminary and final Site Plan review and approval, or subdivision or condominium approval, as the case may be.

- ii. Planned Rezoning Overlay Conditions, as defined for purposes of this Section, which shall be required by the City Council following recommendation by the Planning Commission. Planned Rezoning Overlay Conditions shall not authorize uses or development not permitted in the district proposed by the Rezoning (and shall not permit uses or development expressly or implicitly prohibited in the PRO Agreement).
 - iii. A PRO Agreement, which shall be prepared by the City Attorney and the applicant (or designee) and approved by the City Council, and which shall incorporate the PRO Plan and set forth the Planned Rezoning Overlay Conditions and conditions imposed pursuant to MCL 125.584c, together with any other terms mutually agreed upon by the parties (including the minimum provisions specified in the definition of PRO Agreement, above).
- b. If approved, the zoning district classification of the rezoned property shall consist of the district to which the property has been rezoned, accompanied by a reference to "PRO, Planned Rezoning Overlay". The Zoning Map shall specify the new zoning district plus a reference to "PRO", e.g., the district classification for the property might be "RM-1, Low Density, Low-Rise Multiple Family with PRO, Planned Rezoning Overlay", with a Zoning Map Designation of "RM-1/PRO". Development and use of the property so classified and approved shall be restricted to the permission granted in the PRO Agreement, and no other development or use shall be permitted.
- c. The use of the property in question shall, subject to sub-paragraphs (i) and (ii), below, be in total conformity with all regulations governing development and use within the zoning district to which the property has been rezoned, including, without limitation, permitted uses, lot sizes, setbacks, height limits, required facilities, buffers, open space areas, and land use density; provided, however, the following shall apply:
- (i) Development and use of the property shall be subject to the more restrictive requirements shown or specified on the PRO Plan, and/or in the Planned Rezoning Overlay Conditions imposed, and/or in other conditions and provisions set forth in the PRO Agreement, required as part of the Planned Rezoning Overlay approval, and such PRO Plan and conditions and PRO

Agreement shall overlay and supersede all inconsistent regulations otherwise applicable under the Zoning Ordinance.

- (ii) As part of the grant of final approval of a Planned Rezoning Overlay, the City Council shall be authorized to grant deviations from the strict terms of the Zoning Ordinance governing dimensional requirements on the property; provided, such authorization to grant deviations shall be conditioned upon the Council finding that each Zoning Ordinance provision sought to be deviated would, if the deviation were not granted, prohibit an enhancement of the development that would be in the public interest, and that approving the deviation would be consistent with the City Master Plan and compatible with the surrounding area.

2. The applicant shall have the burden of demonstrating that the following requirements and standards are met by the PRO Plan, Conditions, and PRO Agreement:

- a. Approval of the application shall accomplish, among other things, and as determined in the discretion of the City Council, the integration of the proposed land development project with the characteristics of the project area, and result in an enhancement of the project area as compared to the existing zoning, and such enhancement would be unlikely to be achieved or would not be assured in the absence of the use of a Planned Rezoning Overlay.
- b. Sufficient conditions shall be included on and in the PRO Plan and PRO Agreement on the basis of which the City Council concludes, in its discretion, that, as compared to the existing zoning and considering the site specific land use proposed by the applicant, it would be in the public interest to grant the Rezoning with Planned Rezoning Overlay; provided, in determining whether approval of a proposed application would be in the public interest, the benefits which would reasonably be expected to accrue from the proposal shall be balanced against, and be found to clearly outweigh the reasonably foreseeable detriments thereof, taking into consideration reasonably accepted planning, engineering, environmental and other principles, as presented to the City Council, following recommendation by the Planning Commission, and also taking into consideration the special knowledge and understanding of the City by the City Council and Planning Commission.
- c. In the discretion of the City Council, it shall be determined that there is compliance with all of the General Standards for the approval of uses

subject to special approval are met, as enumerated in Section 2516(2)(c) of this Ordinance.

3. Unless extended by the City Council for good cause, the Rezoning with Planned Rezoning Overlay shall expire following a period of two (2) years from the effective date of the Rezoning unless approved bona fide development of the property pursuant to building and other required permits issued by the City commences within such two (2) year period and proceeds diligently and in good faith as required by ordinance to completion.
 - a. In the event bona fide development has not commenced within two (2) years from the effective date of the Rezoning, the Rezoning and Planned Rezoning Overlay shall be void and of no effect.
 - b. If development and/or actions are undertaken on or with respect to the property in violation of the PRO Agreement, such development and/or actions shall constitute a nuisance *per se*. In such case, the City may issue a stop work order relative to the property and seek any other lawful remedies. Until curative action is taken to bring the property into compliance with the PRO Agreement, the City may withhold, or, following notice and an opportunity to be heard, revoke permits and certificates, in addition to or in lieu of such other lawful action to achieve compliance.
4. If the Rezoning with Planned Rezoning Overlay becomes void in the manner provided in subsection D.3(a), either or both of the following actions may be taken:
 - a. The property owner may seek a new Rezoning of the property; and/or
 - b. The City may initiate a new Rezoning of the property to a reasonable district classification in accordance with the procedure provided by law for Rezonings in cities.

Until such time as a new zoning district classification of the property has become effective, no development shall be undertaken or permits for development issued.

E. Procedure for Application, Review and Approval

1. At the time of making application for amendment of this ordinance seeking a Rezoning of property, or at a later time during the process of City consideration of such Rezoning, a property owner may submit an application for approval of a Planned Rezoning Overlay to apply in conjunction with the Rezoning.

2. The application, which may be amended during the process of consideration, shall include a PRO Plan proposed by the applicant and shall specify the Planned Rezoning Overlay Conditions proposed by the applicant, recognizing that Planned Rezoning Overlay Conditions shall not authorize uses or development not permitted in the district proposed by the Rezoning.
3. The proposed Rezoning with Planned Rezoning Overlay, together, shall be noticed for public hearing before the Planning Commission as a proposed legislative amendment of the Zoning Ordinance pursuant to MCL 125.584b.
4. Following the public hearing, and further deliberations as deemed appropriate by the Planning Commission, the Planning Commission shall make a recommendation to the City Council on the proposed Rezoning with Planned Rezoning Overlay.
5. Upon receipt of the recommendation of the Planning Commission, the City Council shall commence deliberations on the proposed Rezoning with Planned Rezoning Overlay. If the City Council determines that it may approve the Rezoning with Planned Rezoning Overlay, the City Council shall specify tentative conditions under MCL 125.584c, and direct the City Attorney to work with the applicant in the development of a proposed PRO Agreement.
6. Upon completion of the PRO Agreement, the City Council shall make a final determination to approve, approve with conditions, or deny the Rezoning with Planned Rezoning Overlay.

F. Effect of Approval

Approval of the PRO Plan and agreement confirms only the rezoning of the property, subject to any conditions imposed as reflected in the PRO Plan and after recordation as set forth in Paragraph H below. Approval of the usual preliminary site plan and final site plan as set forth in Section 2516 shall be required before any improvements to the property may be undertaken.

G. Amendment of PRO Agreement

Amendment of a PRO Agreement shall be proposed, reviewed and approved in the same manner as a new Rezoning with Planned Rezoning Overlay.

H. Recordation of PRO Agreement

A Rezoning with Planned Rezoning Overlay shall become effective following publication in the manner provided by law and City Charter, and, after recordation of the PRO Agreement, whichever is later.

I. Fee

The applicant for a Rezoning with Planned Rezoning Overlay shall pay as a fee the City's costs and expenses incurred by the City in the review of and preparation of documents for a Rezoning with Planned Rezoning Overlay. An escrow shall be established in an amount specified by City Council Resolution, and additional reasonable amounts shall be contributed as required in order to complete the process of review and approval. Any unexpended amounts from such escrow shall be returned to the applicant.

Part II. That all ordinances or parts of ordinances in conflict with this ordinance are repealed only to the extent necessary to give this ordinance full force and effect.

Part III. Should any section, subdivision, clause, or phrase of this ordinance be declared by the courts to be invalid, the validity of the ordinance as a whole, or in part, shall not be affected other than the part invalidated.

Part IV. That all proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they were commenced.

Part V. That provisions of this ordinance are ordered to take effect twenty-one (21) days after enactment.

Part VI. That this ordinance is declared to have been enacted by the City Council of the City of Novi at a meeting called and held on the ___ day of _____, 2004, and ordered to be given publication in the manner prescribed by law.

CERTIFICATION

It is hereby certified that the foregoing Ordinance was adopted by the City Council of the City of Novi, Oakland County, Michigan, at a meeting of the Council duly called held on ____ day of _____, 2004.

CITY OF NOVI

BY: _____
Maryanne Cornelius, Clerk

INTRODUCED:
ADOPTED:
EFFECTIVE:
PUBLISHED:

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