

cityofnovi.org

# CITY of NOVI CITY COUNCIL

Agenda Item E  
May 18, 2009

**SUBJECT:** Consideration of Zoning Ordinance Text Amendment 18.236, to amend Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance, at Article 34, Amendments to Ordinance, Section 3402, Planned Rezoning Overlay (PRO) at Section 3402.B, Definitions and at Section 3402.D.3, Approval of Rezoning with Planned Rezoning Overlay, in order to clarify the timeframe and the standards for approval of an extension to a rezoning with Planned Rezoning Overlay. **SECOND READING**

**SUBMITTING DEPARTMENT:** Community Development Department - Planning *Burke*

**CITY MANAGER APPROVAL:** *[Signature]*

**BACKGROUND INFORMATION:**

As a part of the Community Development Department's on-going efforts to address deficiencies in the Zoning Ordinance, the City's Planning Staff and the City Attorney's office have proposed an ordinance amendment to clarify the requirements of a Planned Rezoning Overlay (PRO) extension. The amendment clarifies the effective date of the PRO and provides factors for the City Council to consider when determining whether or not an extension should be granted.

On April 8, 2009, the Planning Commission held a public hearing and took action to recommend approval of the text amendment. At that meeting, the Planning Commission also suggested some modifications to the proposed amendment including defining the term "effective date" in Section 3402.B. The suggested modifications have been incorporated in the proposed amendment before the Council this evening. Draft meeting minutes from the April 8, 2009 Planning Commission meeting are attached.

The City Council approved the first reading of the text amendment at the May 4, 2009 meeting. Draft minutes of that meeting are attached.

Since the approval of the first reading, the City Attorney's office has made some minor changes to the amendment to better clarify the requirements of the proposed Section 3402.D.3.c.

**RECOMMENDED ACTION:** Approval of Zoning Ordinance Text Amendment 18.236, to amend Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance, at Article 34, Amendments to Ordinance, Section 3402, Planned Rezoning Overlay (PRO) at Section 3402.B, Definitions and at Section 3402.D.3, Approval of Rezoning with Planned Rezoning Overlay, in order to clarify the timeframe and the standards for approval of an extension to a rezoning with Planned Rezoning Overlay. **SECOND READING**

	1	2	Y	N
Mayor Landry				
Mayor Pro-Tem Gatt				
Council Member Burke				
Council Member Crawford				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

**DRAFT EXCERPT FROM  
CITY COUNCIL MINUTES  
MAY 4, 2009**

*Draft Excerpt*

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI  
MONDAY, MAY 4, 2009 AT 7:00 P.M.  
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE RD.**

**ROLL CALL:** Mayor Landry, Mayor Pro Tem Gatt, Council Members Burke, Crawford, Margolis, Mutch, Staudt

2. **Consideration of Zoning Ordinance Text Amendment 18.236, to amend Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance, at Article 34, Amendments to Ordinance, Section 3402, Planned Rezoning Overlay (PRO) at Section 3402.B, Definitions and at Section 3402.D.3, Approval of Rezoning with Planned Rezoning Overlay, in order to clarify the timeframe and the standards for approval of an extension to a rezoning with Planned Rezoning Overlay. First Reading**

**CM-09-05-064 Moved by Margolis, seconded by Gatt; CARRIED UNANIMOUSLY:**

**To approve Zoning Ordinance Text Amendment 18.236, to amend Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance, at Article 34, Amendments to Ordinance, Section 3402, Planned Rezoning Overlay (PRO) at Section 3402.B, Definitions and at Section 3402.D.3, Approval of Rezoning with Planned Rezoning Overlay, in order to clarify the timeframe and the standards for approval of an extension to a rezoning with Planned Rezoning Overlay. First Reading**

**Roll call vote on CM-09-05-064 Yeas: Crawford, Margolis, Mutch, Staudt, Landry, Gatt, Burke**

**Nays: None**

Mayor Landry said the Administration had been looking at a number of City Ordinances in an effort to update them. He said they were always trying to keep the ordinances fresh and especially the time requirements as they were benchmarking against other communities. He said they were also trying to recognize, with respect to the economy, that some of these development's approvals were given some time ago and they were trying to be cognizant of what was going on around them now. Mayor Landry said Council specifically tasked the Administration to constantly look at the ordinances to make sure they were up to date; so, that was why several ordinance amendments were coming before Council.

**PROPOSED ORDINANCE AMENDMENTS – STRIKE VERSION**

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 09- 18 - 236

AN ORDINANCE TO AMEND ORDINANCE NO. 97-18, AS AMENDED, THE CITY OF NOVI ZONING ORDINANCE, ARTICLE 34, AMENDMENTS TO ORDINANCE, SECTION 3402, PLANNED REZONING OVERLAY (PRO) AT SECTION 3402.B, DEFINITIONS AND AT 3402.D.3, APPROVAL OF REZONING WITH PLANNED REZONING OVERLAY; IN ORDER TO CLARIFY THE TIMFRAME AND THE STANDARDS FOR APPROVAL OF AN EXTENSION TO A REZONING WITH PLANNED REZONING OVERLAY.

**THE CITY OF NOVI ORDAINS:**

**Part I.** That Ordinance No. 97-18, the City of Novi Zoning Ordinance, as amended, Article 34, Amendments to Ordinance, Section 3402, Planned Rezoning Overlay (PRO) are hereby amended to read as follows:

**Article 34, Amendments to Ordinance**

**Sec. 3402. Planned Rezoning Overlay.**

A. *Intent.* [unchanged]

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.

*Effective Date* shall mean the date of recordation of an approved Planned Rezoning Overlay Agreement.

*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.- 10. [unchanged]

*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 125.584c, 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. – 5. [unchanged]

*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.* [unchanged]

D. *Approval of Rezoning with Planned Rezoning Overlay.*

1 - 2. [unchanged.]

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 Planned Rezoning Overlay Agreement ~~Rezoning~~ unless bona fide development of the property, pursuant to the approved 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 the ordinance to completion.

a-b. [unchanged.]

c. The City Council may grant an extension of the Rezoning with Planned Rezoning Overlay for a period of up to two (2) years, and may grant at the conclusion of such extension additional subsequent extensions for similar periods of time. In determining whether good cause exists for an extension, the City Council shall consider the following factors:

(i) The applicant has demonstrated that required utility services have been delayed;

- (ii) The applicant has demonstrated that technical reviews of the final site plan (e.g., related to engineering approvals or approvals by other agencies) have raised unforeseen development delays;
- (iii) The applicant has demonstrated that unforeseen economic events or conditions have caused delays;
- (iv) The approved PRO Plan to be extended is in compliance with all current site plan criteria and current ordinances, laws, codes, and regulations;
- (v) There is no pending zoning ordinance amendment that would otherwise substantially change the requirements of final site plan approval for the approved PRO Plan.

4. [unchanged.]

E – I. [unchanged.]

## **PART II.**

**Severability.** 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 III.**

**Savings Clause.** The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

## **PART IV.**

**Repealer.** All other Ordinance or parts of Ordinance in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

## **PART V.**

**Effective Date: Publication.** Public hearing having been held hereon pursuant to the provisions of Section 103 of Act 110 of the Public Acts of 2006, as amended, the provisions of this Ordinance shall be published within fifteen (15) days of its adoption by publication of a brief notice in a newspaper circulated in the City of Novi stating the date of enactment and effective date, a brief statement as to its regulatory effect and that a complete copy of the Ordinance is available for public purchase, use and inspection at the office of the City Clerk during the hours of 8:00 A.M. to 5:00 P.M., Local Time. The provisions of this Ordinance shall become effective seven (7) days after its publication.

MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF  
NOVI, OAKLAND COUNTY, MICHIGAN, ON THE \_\_\_ DAY OF \_\_\_\_\_, 2009.

\_\_\_\_\_  
DAVID LANDRY, MAYOR

\_\_\_\_\_  
MARYANNE CORNELIUS, CITY CLERK

Ayes:  
Nays:  
Abstentions:  
Absent:



**PROPOSED ORDINANCE AMENDMENTS – CLEAN VERSION**

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 09- 18 - 236

AN ORDINANCE TO AMEND ORDINANCE NO. 97-18, AS AMENDED, THE CITY OF NOVI ZONING ORDINANCE, ARTICLE 34, AMENDMENTS TO ORDINANCE, SECTION 3402, PLANNED REZONING OVERLAY (PRO) AT SECTION 3402.B, DEFINITIONS AND AT 3402.D.3, APPROVAL OF REZONING WITH PLANNED REZONING OVERLAY; IN ORDER TO CLARIFY THE TIMFRAME AND THE STANDARDS FOR APPROVAL OF AN EXTENSION TO A REZONING WITH PLANNED REZONING OVERLAY.

**THE CITY OF NOVI ORDAINS:**

**Part I.** That Ordinance No. 97-18, the City of Novi Zoning Ordinance, as amended, Article 34, Amendments to Ordinance, Section 3402, Planned Rezoning Overlay (PRO) are hereby amended to read as follows:

**Article 34, Amendments to Ordinance**

**Sec. 3402. Planned Rezoning Overlay.**

A. *Intent.* [unchanged]

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.

*Effective Date* shall mean the date of recordation of an approved Planned Rezoning Overlay Agreement.

*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.- 10. [unchanged]

*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 125.584c, 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. – 5. [unchanged]

*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.* [unchanged]

D. *Approval of Rezoning with Planned Rezoning Overlay.*

1 - 2. [unchanged.]

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 Planned Rezoning Overlay Agreement unless bona fide development of the property, pursuant to the approved 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 the ordinance to completion.

a-b. [unchanged.]

c. The City Council may grant an extension of the Rezoning with Planned Rezoning Overlay for a period of up to two (2) years, and may grant at the conclusion of such extension additional subsequent extensions for similar periods of time. In determining whether good cause exists for an extension, the City Council shall consider the following factors:

(i) The applicant has demonstrated that required utility services have been delayed;

- (ii) The applicant has demonstrated that technical reviews of the final site plan (e.g., related to engineering approvals or approvals by other agencies) have raised unforeseen development delays;
- (iii) The applicant has demonstrated that unforeseen economic events or conditions have caused delays;
- (iv) The approved PRO Plan to be extended is in compliance with all current site plan criteria and current ordinances, laws, codes, and regulations;
- (v) There is no pending zoning ordinance amendment that would otherwise substantially change the requirements of final site plan approval for the approved PRO Plan.

4. [unchanged.]

E – I. [unchanged.]

## **PART II.**

**Severability.** 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 III.**

**Savings Clause.** The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

## **PART IV.**

**Repealer.** All other Ordinance or parts of Ordinance in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

## **PART V.**

**Effective Date: Publication.** Public hearing having been held hereon pursuant to the provisions of Section 103 of Act 110 of the Public Acts of 2006, as amended, the provisions of this Ordinance shall be published within fifteen (15) days of its adoption by publication of a brief notice in a newspaper circulated in the City of Novi stating the date of enactment and effective date, a brief statement as to its regulatory effect and that a complete copy of the Ordinance is available for public purchase, use and inspection at the office of the City Clerk during the hours of 8:00 A.M. to 5:00 P.M., Local Time. The provisions of this Ordinance shall become effective seven (7) days after its publication.

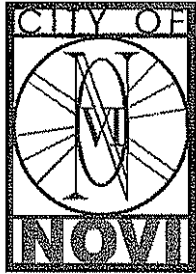
MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF  
NOVI, OAKLAND COUNTY, MICHIGAN, ON THE \_\_\_ DAY OF \_\_\_\_\_, 2009.

\_\_\_\_\_  
DAVID LANDRY, MAYOR

\_\_\_\_\_  
MARYANNE CORNELIUS, CITY CLERK

Ayes:  
Nays:  
Abstentions:  
Absent:

**PLANNING COMMISSION MEETING  
MINUTES – EXCERPT  
April 8, 2009**



cityofnovi.org

# PLANNING COMMISSION

DRAFT COPY

CITY OF NOVI  
Regular Meeting

**Wednesday, April 8, 2009 | 7 PM**

Council Chambers | Novi Civic Center | 45175 W. Ten Mile  
(248) 347-0475

## CALL TO ORDER

The meeting was called to order at or about 7:00 PM.

## ROLL CALL

**Present:** Members David Baratta, Victor Cassis, David Greco, Brian Larson, Michael Lynch, Michael Meyer (7:02 PM), Mark Pehrson, Leland Prince

**Absent:** Member Andy Gutman (excused)

**Also Present:** Kristen Kapelanski, Planner; Doug Necci, Façade Consultant; Kristin Kolb, City Attorney

## PLEDGE OF ALLEGIANCE

The meeting attendees recited the Pledge of Allegiance.

## APPROVAL OF AGENDA

Moved by Member Lynch, seconded by Member Greco:

## VOICE VOTE ON AGENDA APPROVAL MOTION MADE BY MEMBER LYNCH AND SECONDED BY MEMBER GRECO:

**A motion to approve the April 8, 2009 Planning Commission Agenda. Motion carried 7-0.**

## AUDIENCE PARTICIPATION

No one from the audience wished to speak.

## CORRESPONDENCE

There was no Correspondence to share.

## COMMITTEE REPORTS

There were no Committee Reports.

## COMMUNITY DEVELOPMENT DEPUTY DIRECTOR REPORT

Planner Kristen Kapelanski told the Planning Commission members that City Council approved the second reading of the Text Amendment regarding applicable zoning districts for fitness centers smaller than 2,000 square feet.

## CONSENT AGENDA - REMOVALS AND APPROVAL

### 1. THE RUSHMORE, SP05-41

Consideration of the request of Eudora Adolph for a one-year Final Site Plan extension. The subject property is located in Section 33, south of Nine Mile and east of Beck Road in the R-1, One-Family Residential District. The subject property is approximately 4.59 acres and the Applicant is proposing a six-lot site condominium for single family residential dwellings.

### 2. BROCKDALE ESTATES, SP06-43

Consideration of the request of Central Real Estate Development Company for a one-year Preliminary Site Plan extension. The subject property is located in Section 3, west of Novi Road between Thirteen Mile and Fourteen Mile in the R-4, One Family Residential District. The subject property is approximately 3.07 acres and the Applicant is proposing a six-unit attached one-family residential development.

Moved by Member Lynch, seconded by Member Greco:

**VOICE VOTE ON CONSENT AGENDA APPROVAL MOTION MADE BY MEMBER LYNCH AND SECONDED BY MEMBER GRECO:**

**A motion to approve the April 8, 2009 Consent Agenda. Motion carried 7-0.**

**PUBLIC HEARINGS**

**1. ZONING ORDINANCE TEXT AMENDMENT 18.236**

The Public Hearing was opened for Planning Commission's recommendation to City Council for an ordinance to amend Ordinance No. 97-18, as amended, the City of Novi Zoning Ordinance Article 34, Amendments to the Ordinance, Section 3402 "Planned Rezoning Overlay" in order to clarify the timeframe and the standards for approval of an extension of a rezoning with Planned Rezoning Overlay.

Planner Kristen Kapelanski described what changes are proposed as part of Text Amendment 18.236 relating to Planned Rezoning Overlays. The language provides City Council with factors to consider when determining whether an applicant should be granted an extension. Staff recommends that one additional stipulation be added to Section 3400.b of this Amendment, which clarifies that the "effective date" shall mean the date of recordation of an approved Planned Rezoning Overlay Agreement. If the Planning Commission supports this Text Amendment and additional language, the motion for recommendation to City Council should also reference this additional stipulation.

No Public Hearing responses were received and no one from the audience wished to speak so Chair Pehrson closed the Public Hearing. Chair Pehrson acknowledged that Member Meyer arrived at 7:02 PM.

Member Cassis noted that the language allows City Council to extend a PRO as many times as they choose. He understood that the "safety" in place is City Council's approval of an extension request. He asked City Attorney Kristen Kolb to comment on this practice. Ms. Kolb explained that there are proposed standards in the new language that would provide City Council with a basis on which they could grant such an extension. The extensions are not necessarily unlimited; rather the Council would have to make specific Findings in line with the proposed standards in order to grant an extension. Novi's Ordinance is unique in that it offers this PRO option. Most other communities have a Planned Unit Development (PUD) ordinance. A PUD does offer time limitations and there are opportunities to extend PUDs as well.

Member Cassis was concerned that PROs are unique and not just standard rezoning requests. This new manner of granting PRO extensions removes the requirements for Public Hearing notification and the public comment period. He thought it made the decision more political in nature.

Mr. Baratta asked whether "and recorded" could be stricken from the body of the Ordinance in light of the definition for "effective date" being added to the language. Ms. Kapelanski thought that this request could be accommodated.

Moved by Member Lynch, seconded by Member Prince:

**ROLL CALL VOTE ON ZONING ORDINANCE TEXT AMENDMENT 18.236 RECOMMENDATION FOR APPROVAL MOTION MADE BY MEMBER LYNCH AND SECONDED BY MEMBER PRINCE:**

**In the matter of Zoning Ordinance Text Amendment 18.236 relating to Section 3402, "Planned Rezoning Overlay," a motion to recommend approval of the Amendment to City Council, which includes Staff's recommendation [to include a definition for the term "effective date. "] Motion carried 7-1 (Yes: Baratta, Greco, Larson, Lynch, Meyer, Pehrson, Prince; No: Cassis).**