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**CONDITIONAL RE-ZONING**

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**ARTICLE 12:      CONDITIONAL RE-ZONING**

**SECTION 12.01:            PURPOSE AND INTENT**

It is recognized that there are certain instances where it would be in the best interests of the Charter Township of Marquette as well as advantageous to property owners seeking a change in zoning boundaries, if certain conditions could be proposed by property owners as part of a request for re-zoning. It is the intent of this Section to provide a procedure consistent with the provisions of Section 405 of the Michigan Zoning Enabling Act 110, 2006, (MCL 125.3405), as amended, by which an owner seeking a re-zoning may voluntarily propose conditions regarding the use and/or development of land as part of the re-zoning request.

**SECTION 12.02:            APPLICATION AND OFFER OF CONDITIONS**

- 1)      An owner of land may voluntarily Offer in writing, Conditions relating to the use and/or development of land for which a re-zoning is requested. This Offer shall be made at the time the application for re-zoning is filed.
  
- 2)      The required application and procedure for considering a re-zoning request with conditions shall be the same as that for considering re-zoning requests made without any Offer of Conditions, except as modified by the requirements of this Section.
  
- 3)      The owners Offer of Conditions may not purport to authorize uses or developments not permitted in the requested zoning district.
  
- 4)      The owner’s Offer of Conditions shall bear a reasonable and rational relationship to the property for which re-zoning is requested.
  
- 5)      Any use or development proposed as part of an Offer of Conditions what 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 requirements as set forth in Article XVI of this Ordinance.
  
- 6)      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 requirements as set forth in Article XXIII of this Ordinance.
  
- 7)      Any use of 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 requirements as set forth in this Ordinance in Article XVII, Site Plan Review.

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## ARTICLE 12 – CONDITIONAL REZONING

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### **SECTION 12.02:            APPLICATION AND OFFER OF CONDITIONS – (Cont.)**

- 8)     The Offer of Conditions may be amended during the process of re-zoning provided that any amended or additional conditions are entered voluntarily by the owner. An owner may withdraw all or part of its Offer of Conditions any time prior to final re-zoning action by the Township Board provided that, if such withdrawal occurs subsequent to the Planning Commission’s public hearing on the original re-zoning request, then the re-zoning application shall be referred to the Planning Commission for a new public hearing with appropriated notice and a new recommendation.

### **SECTION 12.03:            PLANNING COMMISSION REVIEW**

The Planning Commission, after public hearing and consideration of the factors for re-zoning set forth in this Ordinance, Article XXIV, Changes and Amendments, Section 24.06, Fact Finding, may recommend approval, approval with recommended changes or denial of the re-zoning provided, however, that any recommended changes to the Offer of Conditions are acceptable too and thereafter offered by the owner.

### **SECTION 12.04:            TOWNSHIP BOARD REVIEW**

After receipt of the Planning Commission’s recommendation, the Township Board shall deliberate upon the requested re-zoning and may approve or deny the conditional re-zoning request. The Township Board’s deliberations shall include, but not be limited to, a consideration of the factors for re-zoning set forth in Section 24.06 of this Ordinance. Should the Township Board consider amendments to the proposed conditional re-zoning advisable and if such contemplated amendments to the Offer of Conditions, are acceptable to and thereafter offered by the owner, then the Township Board shall, in accordance with Section 11 of the Township Zoning Act (MCL 125.281), refer such amendments to the Planning Commission for a report thereon within a time specified by the Township Board and proceed thereafter in accordance with said statute to deny or approve the conditional rezoning with or without amendments.

### **SECTION 12.05:            APPROVAL**

- 1)     If the Township Board finds the re-zoning request and Offer of Conditions acceptable, the offered conditions shall be incorporated into a formal written Statement of Conditions acceptable to the owner and conforming in form to the provisions of this Section. The Statement of Conditions shall be incorporated by attachment or otherwise as an inseparable part of the Ordinance adopted by the Township Board to accomplish the requested re-zoning.

## ARTICLE 12 – CONDITIONAL REZONING

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### SECTION 12.05: APPROVAL – (Cont.)

- 2) **The Statement of Conditions Shall:**
  - a) Be prepared in a form recordable with the Marquette County Register of Deeds or, as an alternative, be accompanied by a recordable Affidavit or Memorandum prepared and signed by the owner giving notice of the Statement of Conditions in a manner acceptable to the Township Board.
  - b) Contain a legal description of the land to which it pertains.
  - c) Contain a statement acknowledging that the Statement of Conditions runs with the land and is binding upon successor owners of the land.
  - d) Incorporate by attachment or reference any diagram, plans or other documents submitted or approved by the 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.
  - e) Contain a statement acknowledging that the Statement of Conditions or an Affidavit of Memorandum giving notice thereof shall be recorded by the Township Clerk with the Register of Deeds of Marquette County.
  - f) Contain the notarized signatures of all of the 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.
- 3) Upon the re-zoning taking effect, the Zoning Map shall be amended to reflect the new zoning classification along with a designation that the land was re-zoned with a Statement of Conditions. The Township Clerk shall maintain a listing of all lands re-zoned with a Statement of Conditions.
- 4) Upon the re-zoning taking effect, the use of the land so re-zoned shall conform thereafter to all of the requirements regulating use and development within the new zoning district as modified by any more restrictive provisions contained in the Statement of Conditions.

### SECTION 12.06: COMPLIANCE WITH CONDITIONS

- 1) Any person who establishes a development or commences a use upon land that has been Re-zoned 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.

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### **SECTION 12.06: COMPLIANCE WITH CONDITIONS – (Cont.)**

- 2) 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 the law.
- 3) No permit or approval shall be granted under this Ordinance for any use or development that is contrary to an applicable Statement of Conditions.

### **SECTION 12.07: TIME PERIOD FOR ESTABLISHING, DEVELOPING, OR USE**

Unless another time period is specified in the Ordinance re-zoning the subject land, the approved development and/or use of the land pursuant to building and other required permits shall be commenced upon the land within 18 months after the re-zoning took effect and thereafter proceed diligently to completion. This time limitation may upon written request be extended by the Township Board if:

- 1) It is demonstrated to the Township Board'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.
- 2) The Township Board finds that there has not been a change in circumstances that would render the current zoning with Statement of Conditions incompatible with other zones and uses in the surrounding area or otherwise inconsistent with sound zoning policy.

### **SECTION 12.08: REVERSION OF ZONING**

If approved development and/or use of the re-zoned land does not occur within the 18 month time-frame specified under Subsection G above, then the land shall revert to its former zoning classification as set forth in MCL 125.286i. The reversion process shall be initiated by the Township Board requesting that the Planning Commission proceed with consideration of re-zoning the land to its former zoning classification. The procedure for considering and making this reversionary re-zoning shall thereafter be the same as applies to all other re-zoning requests.

### **SECTION 12.09: SUBSEQUENT RE-ZONING OF LAND**

When land that is re-zoned with a Statement of Conditions is thereafter re-zoned 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 pursuant to Subsection H above or otherwise, the Statement of Conditions imposed under the former zoning classification shall cease to be in effect. Upon the owner's written request, the Township Clerk shall record with the Marquette County Register of Deeds, a notice that the Statement of Conditions is no longer in effect.

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### **SECTION 12.10:            AMENDMENT OF CONDITIONS**

- 1)     During the time period for commencement of an approved development or use specified pursuant to Subsection G above or during any extension thereof granted by the Township Board, Township Officials shall not add to or alter the conditions in the Statement of Conditions.
  
- 2)     The Statement of Conditions may be amended thereafter in the same manner as was prescribed for the original re-zoning procedures and Statement of Conditions.

### **SECTION 12.11:            TOWNSHIP RIGHT TO RE-ZONE**

Nothing in the Statement of Conditions nor in the provisions of this Section shall be deemed to prohibit the Township from re-zoning all or any portion of land that is subject to a Statement of Conditions to another zoning classification. Any re-zoning shall be conducted in compliance with this Ordinance and the Township Zoning Act (MCL 125.271 et seq.).

### **SECTION 12.12:            FAILURE TO OFFER CONDITIONS**

The Township shall not require an owner to Offer Conditions as a requirement for re-zoning. The lack of an Offer of Conditions shall not affect an owner's rights under this Ordinance.