

ORDINANCE NO: 803

AN ORDINANCE TO MODIFY ARTICLE 13 AMENDING CHAPTER 60 ZONING OF THE ORDINANCES OF THE CITY OF ALMA THROUGH THE ADDITION OF SECTION 60-382 CONDITIONAL ZONING.

THE CITY OF ALMA ORDAINS:

Section 1. Chapter 60 of the Code of the City of Alma be, and is hereby amended by adding Section 60-382, to read as follows:

Section 60-382 Conditional Zoning

- (a) **Intent.** It is recognized that there are certain instances where it would be in the best interests of the City, as well as advantageous to property owners seeking a change in zoning classification, that certain conditions could be proposed by property owners as part of a request for rezoning. This is especially true since the City must consider all potential uses which may be made of property when considering a traditional rezoning request, some of which may be inappropriate for a particular piece of property considering items such as, but not limited to, the surrounding land uses, the City Master Plan, available infrastructure and utilities, and natural features. It is the intent of this Section to provide a process consistent with the provisions of Section 405 of the Michigan Zoning Enabling Act, Public Act No. 1 10 of 2006 as amended, MCL 1 25.3101 et seq., by which an owner seeking a rezoning may voluntarily propose conditions regarding the use and/or development of land as part of the rezoning request.
- (b) **Application and offer of conditions.** An owner of land may voluntarily offer in writing conditions relating to the use and/or development of land for which a conditional rezoning is requested. This offer may be made either at the time the application for conditional rezoning is filed, or additional conditions may be offered at a later time during the conditional rezoning process as set forth below.
- (1) **General procedure.** A request for a conditional rezoning shall be commenced by filing an application with the City Zoning Administrator or designee, on the required forms, accompanied by the specified fees. The application and process for considering a conditional rezoning request will be the same as that for considering a rezoning request without any conditions, except as modified by this Section. The application shall explicitly describe the proposed conditional rezoning and shall be signed by the owner of the property. Applications for conditional rezoning of a specific site shall be accompanied by a plot plan or survey which contains all the information required in Section 60-307 of this Ordinance. The applicant shall also present a conceptual plan showing the specific proposed use of the property and containing all the information outlined in Section 60-307 of this Ordinance.
- (2) **Pre-application conference.** Prior to filing a formal request for a conditional rezoning, and prior to a public hearing, the applicant must informally meet with the City Zoning Administrator or designee, and other representatives as deemed necessary by the City, to discuss the proposed development. The Pre-Application Conference is intended to be informative and advisory in nature and affords the applicant the opportunity to discuss the land use and planning policies of the City of Alma.

The applicant must present a conceptual plan for the contemplated conditional rezoning at or before the Pre-Application Conference. Any and all statements made by the City of Alma City Commission, Zoning Administrator or designee, Planning Commissioners, City employees, attorneys, agents, or representatives at the Preapplications Conference have no legal force and are not legal and binding promises, commitments, or contracts.

(c) **Review procedures.** The owner's offer of conditions may not purport to authorize uses or developments not permitted in the requested new zoning district. The owner's offer of conditions shall bear a reasonable and rational relationship to the property for which the conditional rezoning is requested. Further, the Planning Commission and City Commission shall, at a minimum, consider all the review considerations contained in Section 60-381 of this Ordinance in rendering a decision on a request for conditional rezoning.

(1)) **Other required approvals.**

- a. 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.
- b. 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 terms of this Ordinance.

(2) **Amendment of conditions.** The offer of conditions may be amended during the process of conditional rezoning consideration, provided that any amended or additional conditions are entered voluntarily by the owner and confirmed in writing. An owner may withdraw in writing all or part of its offer of conditions any time prior to final rezoning action of the City Commission provided that, if such withdrawal occurs subsequent to the Planning Commission's public hearing on the original rezoning request, then the rezoning application shall be referred back to the Planning Commission for a new public hearing with appropriate notice and a new recommendation.

(d) **Planning Commission review.** The Planning Commission, after public hearing and consideration of the factors for rezoning set forth in Section 60-381 of 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 owner in writing. In the event that any recommended changes to the offer of conditions are not subsequently offered by the owner in writing, the recommendation of the Planning Commission shall be considered by the City Commission to be a recommendation of denial of the proposed conditional rezoning.

(e) **City Commission review.** After receipt of the Planning Commission's recommendation, the City Commission shall review the Planning Commission's recommendation and deliberate upon the requested conditional rezoning, considering the factors for rezoning set forth in Section 60-381, and

may approve or deny the conditional rezoning request. If the applicant initiates additional or different conditions not considered by the Planning Commission subsequent to the recommendation of the Planning Commission, then the City Commission shall refer such proposed additional or different conditions to the Planning Commission for report thereon within a time specified by the City Commission, and the City Commission shall thereafter proceed to deny or approve the conditional rezoning.

(f) **Approval.** If the City Commission finds the conditional rezoning request and offer of conditions acceptable, the offer of 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 City Commission to accomplish the requested conditional rezoning. The Statement of Conditions shall:

- (1) Be prepared in a form recordable with the Gratiot County Register of Deeds;
- (2) Contain a legal description of the land to which it pertains;
- (3) Contain a statement acknowledging that the Statement of Conditions runs with the land, and is binding upon successor owners of the land;
- (4) Incorporate by attachment the conceptual plan which formed the basis of the conditional rezoning;
- (5) Contain the notarized signatures of all the owners of the property preceded by a statement attesting to the fact that they are the only parties having an interest in the property, and that they voluntarily offer and consent to the provisions contained within the Statement of Conditions;
- (6) The Statement of Conditions may be reviewed and approved by the City Attorney, with the applicant to pay all costs associated with such review and approval.

The approved Statement of Conditions shall be filed by the owner with the Gratiot County Register of Deeds within thirty (30) days after approval of the conditional rezoning. The owner shall provide the City with a recorded copy of the Statement of Conditions within thirty (30) days of receipt. The City Commission shall have the authority to waive this requirement if it determines that, given the nature of the conditions and/or the time frame within which the conditions are to be satisfied, the recording of the Statement of Conditions would be of no material benefit to the City or to any subsequent owner of the land; and

Upon the conditional rezoning taking effect, the Zoning Map shall be amended to reflect the new zoning classification, together with a designation that the land was a Conditional Rezoning with a Statement of Conditions. Upon the conditional rezoning taking effect, and after the required recording of the Statement of Conditions, unless waived, use of the land so rezoned shall conform thereafter to all the requirements regulating use and development within the new zoning district as modified by any more restrictive provisions contained in the Statement of Conditions.

(g) **Compliance with conditions.** Any person who establishes development or commences a use upon land that has been conditionally rezoned shall continuously operate and maintain the development or use in full compliance with all the conditions set forth in the Statement of Conditions. Any failure

to comply fully with the conditions contained within the Statement of Conditions shall constitute a violation of this 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.

- (h) **Time period for establishing development or use.** The approved development and/or use of the land pursuant to building and other required permits must be commenced upon the land within eighteen (18) months after the effective date by publication of the conditional rezoning action and must thereafter proceed diligently to completion. This time limitation may, upon written request, be extended by the City Commission if:
 - (1) It is demonstrated to the City Commission's sole 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 Commission finds that there has not been change in circumstances that would render the conditional rezoning with Statement of Conditions incompatible with other zones and uses in the surrounding area or otherwise inconsistent with sound zoning policy.
- (i) **Reversion of zoning.** If approved development and/or use of the rezoned land does not occur within the time frame specified under subsection (h) above, then the land shall revert to its former zoning classification as set forth in MCL 125.3405(2). The reversion process shall be initiated by the City Commission and proceed pursuant to Section 60-380.
- (j) **Subsequent rezoning of land.** When land that is conditionally rezoned with the 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 pursuant to subsection (i) above, or upon application of the landowner, 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 City Clerk shall record with the Gratiot County Register of Deeds a notice that the Statement of Conditions is no longer in effect.
- (k) **Amendment of conditions.** During the time period for commencement of an approved development or use specified pursuant to subsection (h) above, or during any extension thereof granted by the City Commission, the City shall not add to or alter the conditions in the Statement of Conditions.

The Statement of Conditions may be amended thereafter in the same manner as was prescribed for the original conditional rezoning and Statement of Conditions.

- (l) **City 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 this Ordinance and the Michigan Zoning Enabling Act, Public Act No. 110 of 2006 as amended, MCL 125.3101 et seq.

(m) **Failure to offer conditions.** The City shall not require an owner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect an owner's rights under this Ordinance.

Section 2. Separability. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 3. Ordinances Repealed. All ordinances and/or parts of ordinances inconsistent with this ordinance are hereby repealed.

Section 4. Effective Date. This ordinance shall take effect and be in force 15 days from and after its enactment as provided by the City Charter.


Passed and approved by the City Commission of the City of Alma, Michigan, in regular session, held October 23, 2018.

We, the undersigned, Mayor and Clerk of the City of Alma, Michigan, do hereby certify that the above and foregoing Ordinance, known as Ordinance No. 803 of the City of Alma, Michigan, was introduced at a regular meeting of the City Commission, held on September 25, 2018 and was thereafter passed at a regular meeting on October 23, 2018, at least two weeks elapsing between the introduction and the enactment.

Dated at Alma, Michigan, this 23rd day of October 2018.



Gregory S. Mapes, Mayor



Sheila Letourneau, Clerk

I, the undersigned, City Clerk, DO HEREBY CERTIFY that the foregoing and above Ordinance No. 803 of the City of Alma, Michigan, is a true and compared copy of the original ordinance, now on file in my office, and of the whole thereof; that the same was published within 10 days from its adoption in the Morning Sun, a newspaper printed, published and circulated in the City of Alma, Michigan, and that the Affidavit of Publication thereof is now on file in my office and is a part of the original records pertaining to the adoption of the aforesaid ordinance.

I FURTHER CERTIFY that in accordance with the provisions of Section 5.3 and 5.5 of Chapter V of the Charter of Alma, Michigan, the foregoing ordinance shall take effect 15 days after its enactment as aforesaid.

Dated October 23, 2018 at Alma, Michigan



Sheila Letourneau, City Clerk