

STATE OF MICHIGAN
COUNTY OF OAKLAND
VILLAGE OF LAKE ORION

ORDINANCE NO.26.94

An Ordinance to amend the Zoning Ordinance, Article 19 Administrative Procedures and Standards, to add Section 19.08 – CONDITIONAL REZONING (CR)

THE VILLAGE OF LAKE ORION ORDAINS:

Article 19 – Administrative Procedures and Standards
Section 19.08 – CONDITIONAL REZONING (CR)

The Village Zoning Ordinance is amended to add Section 19.08, and recommended by the Planning Commission, after public hearing was held on September 4, 2018:

Section 19.08 - CONDITIONAL REZONING (CR)

(1) *Intent.* The Planning Commission and Village Council have recognized that, in certain instances, it would be advantageous to both the Village and property owners seeking rezoning if a plan, along with conditions and limitations that may be relied upon by the Village, 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 conditions, per *Public Act 110 of 2006, as amended.*

(2) *Definitions.*

(a) **Rezoning Conditions** shall mean conditions proposed by the applicant and approved by the Village as part of an approval under this Section, including review and recommendation by the Planning Commission, which shall constitute regulations in connection with the development and use of property approved with a rezoning condition in conjunction with a rezoning. Such Rezoning Conditions shall not authorize uses or developments of greater intensity or density and which are not permitted in the district proposed by the rezoning (and shall not permit uses or development expressly or implicitly prohibited in the Conditional Rezoning Agreement), and may include some or all of the following:

1. The location, size, height or other measure for and/or of buildings, structures, improvements, setbacks, landscaping, buffers, design, architecture, and other features shown on the CR Plan.

17. Installation of streetscape on an arterial road, beyond what is required by ordinance, and where compatible with Village guidelines concerning trees, streetlights, and landscaping.
 18. Drain and drainage improvements, beyond what is required by Ordinance, using best management practices.
 19. Providing monuments or other landmarks to identify Village boundaries.
 20. Such other conditions as deemed important to the development by the applicant.
- (b) **Conditional Rezoning (CR) Agreement** shall mean a written agreement approved and executed by the Village and property owner, incorporating a CR Plan, and setting forth Rezoning Conditions, conditions imposed pursuant to *Public Act 110 of 2006, as amended*, and any other terms mutually agreed upon by the parties relative to land for which the Village has approved a rezoning with Rezoning Conditions. Terms of the CR Agreement shall include agreement and understanding of the following:
1. That the rezoning with Rezoning Conditions was proposed by the applicant to induce the Village to grant the rezoning;
 2. That the Village relied upon such proposal and would not have granted the rezoning but for the terms spelled out in the CR Agreement;
 3. That the conditions and CR Agreement are authorized by all applicable state and federal laws and constitutions;
 4. That the CR Agreement is valid and was entered into on a voluntary basis, and represents a permissible exercise of authority by the Village;
 5. That the property in question shall not be developed or used in a manner inconsistent with the CR Plan and CR Agreement;
 6. That the approval and CR Agreement shall be binding upon and inure to the benefit of the property owner and Village, and their respective heirs, successors, assigns, and transferees;
 7. That, if a rezoning with Rezoning Conditions becomes void in the manner provided in this Section, no development shall be undertaken or permits for development issued until a new zoning district classification of the property has been established; and
 8. That each of the requirements and conditions in the CR Agreement represents a necessary and reasonable measure which, when considered with all other

- (c) *A CR Agreement*, as defined in Section 19.08(2)(b) above. The CR Agreement shall be prepared by the applicant (or designee) and approved by the Village Attorney. The CR Agreement shall incorporate the CR Plan and set forth the Rezoning Conditions, together with any other terms mutually agreed upon by the parties (including the minimum provisions specified in the definition of CR Agreement, above).
- (5) *Review and Approval Criteria*. The applicant shall have the burden of demonstrating that the following requirements and standards are met by the CR Plan, Rezoning Conditions, and CR Agreement:
- (a) *Enhancement of the Project Area*. Approval of the application shall accomplish, among other things, and as determined in the discretion of the Village 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 requested zoning change, and such enhancement would be unlikely to be achieved or would not be assured in the absence of the use of a Conditional Rezoning.
- (b) *In the Public Interest*. Sufficient conditions shall be included on and in the CR Plan and CR Agreement on the basis of which the Village 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 Rezoning Conditions; 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 Village Council, following recommendation by the Planning Commission, and also taking into consideration the special knowledge and understanding of the Village by the Village Council and Planning Commission.
- (6) *Review Process*
- (a) *Pre-Application Meeting*. Prior to the time of making application for a Conditional Rezoning, the applicant shall schedule a pre-application submission meeting with the Village Manager, the Village Planner, the Village Engineer, the Village Attorney, or their designees, for a preliminary review of the application for Conditional Rezoning and so that the applicant has a thorough understanding of the process. The Applicant shall pay the Village's costs and expenses incurred for this meeting.
- (b) *Offer of Conditions*. At the time of making application for amendment of this ordinance seeking a rezoning of property, or at least a later time during the process of Village consideration of such rezoning, a property owner may submit an application for approval of a Conditional Rezoning to apply in conjunction with the rezoning.

- (9) *Recordation of CR Agreement.* A Rezoning with Rezoning Conditions shall become effective following publication in the manner provided by law and after recordation of the CR Agreement with the County Register of Deeds, whichever is later.
- (10) *Amendment to CR Agreement.* Amendment of a CR Agreement shall be proposed, reviewed and approved in the same manner as a new rezoning with Rezoning Conditions.
- (11) *Expiration.* Unless extended by the Village Council for good cause, the rezoning with Rezoning Conditions shall expire following a period of two (2) years from the effective date of the Rezoning unless construction on the development of the property pursuant to the required permits issued commences within such two (2)-year period and proceeds diligently and in good faith as required by ordinance to completion.
- (a) *Extension of Approval.* In the event the development has not commenced, as defined above, within two (2) years from the effective date of the rezoning, the Conditional Rezoning and the CR Agreement shall be void and of no effect. The property owner may apply to the Village Council for a 1-year extension one (1) time. The request must be submitted to the Village before the two (2)-year time limit expires. The property owner must show good cause as to why the extension should be granted.
- (b) *Violation of the CR Agreement.* If development and/or actions are undertaken on or with respect to the property in violation of the CR Agreement, such development and/or actions shall constitute a nuisance per se. In such cases, a stop work order may be issued relative to the property and any other lawful remedies sought. Until curative action is taken to bring the property into compliance with the CR Agreement, the Village may withhold, or following notice, revoke permits and certificates, in addition to or in lieu of such other lawful action to achieve compliance.
- (c) *Village Action Upon Expiration.* If the Rezoning with Rezoning Conditions becomes void in the manner provided in above, then the Village shall rezone the property to its former zoning classification in accordance with the Zoning Ordinance procedures. Additionally, the property owner may seek an alternative zoning designation. Until such a time as a new zoning district classification of the property has become effective, no development shall be undertaken or permits for development issued.