

City of Alpena
Ordinance No. ____ of 2021

An ordinance to amend the City of Alpena Zoning Ordinance Article 10 (Adoption and Amendments).

City of Alpena, Alpena County, Michigan ordains:

SECTION 1: AMENDMENT TO THE CITY OF ALPENA ZONING ORDINANCE

That the City of Alpena Zoning Ordinance, Article 10 (Adoption and Amendments) is hereby amended to read as follows:

Section 10.2 Rezoning Standards

The Planning Commission shall review and apply the following standards and factors in the consideration of any rezoning request:

- A. Is the proposed rezoning consistent with **goals and objectives** of the current Comprehensive Plan?
- B. Are all of the allowable uses in the proposed district reasonably consistent with surrounding uses?
- C. Will there be an adverse physical impact on surrounding properties?
- D. Have there been changes in land use or other conditions in the immediate area or in the community in general which justify rezoning?
- E. Will rezoning create a deterrent to the improvement or development of adjacent property in accord with existing regulations?
- F. Will rezoning grant a special privilege to an individual property owner when contrasted with other property owners in the area or the general public (i.e. will rezoning result in spot zoning)?
- ~~G. Are there substantial reasons why the property cannot be used in accordance with its present zoning classifications?~~
- ~~H. G. Is the site served by adequate public facilities or is the petitioner able to provide them?~~
- ~~I. Are there sites nearby already properly zoned that can be used for the intended purposes?~~

(add new) Section 10.3 Conditional Rezoning

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 boundaries, if certain conditions could be proposed by property owners as part of a request for a rezoning. It is the intent of this Section to provide a

process consistent with Section 405 of the **Michigan Zoning Enabling Act, 2006 PA 110**, as amended, 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.

1. An owner of land may voluntarily offer, in writing, conditions relating to the use and/or development of land for which a rezoning is requested. This offer may be made either at the time the application for rezoning is filed or may be made at a later time during the rezoning process.
2. The required application and process for considering a rezoning request with conditions shall be the same as that for considering rezoning requests made without any offer of conditions, except as modified by the requirements of this Section.
3. The owner's offer of conditions may not authorize uses or developments not permitted in the requested new zoning district.
4. The owner's offer of conditions shall bear a reasonable and rational relationship to the property for which rezoning is requested.
5. Any use or development proposed as part of an offer of conditions that would require a special land use permit, variance, or site plan approval under the terms of this Ordinance may only be commenced if the special land use permit, variance, or site plan approval for such use or development is ultimately granted in accordance with the provisions of this Ordinance.
6. The offer of conditions may be amended during the process of rezoning consideration 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 rezoning action of the City Council 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 to the Planning Commission for a new public hearing with appropriate notice and a new recommendation.

C. Planning Commission Review.

The Planning Commission, after a public hearing as set forth pursuant to **Section 9.6** of this Ordinance and consideration of the factors set forth in **Section 10.2** (except **10.2.F**) of this Ordinance, may recommend approval, approval with recommended changes, or denial of rezoning; provided, however, that any recommended changes to the offer of conditions are acceptable to and thereafter offered by the owner.

D. City Council Review.

After receipt of the Planning Commission's recommendation, the City Council shall deliberate upon the requested conditional rezoning and may approve or deny the request. Should the City Council consider amendments to the proposed conditional rezoning advisable and if such contemplated amendments to the offer of conditions are acceptable to and thereafter offered by the owner, then the City Council shall, in accordance with Section 401 of **2006 PA 110**, refer such amendments to the Planning Commission for a report thereon

within a time specified by the City Council, and proceed thereafter in accordance with said statute to deny or approve the conditional rezoning with or without amendments.

E. Approval.

1. If the City Council finds the rezoning 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 City Council to accomplish the requested rezoning.
2. The Statement of Conditions shall:
 - a. Be in a form recordable with the 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 City Council.
 - b. Contain the legal description and tax identification number 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 or Memorandum giving notice thereof may be recorded by the City with the County Register of Deeds.
 - f. Contain the notarized signatures of all 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 rezoning taking effect, the Zoning Map shall be amended to reflect the new zoning classification along with a designation the land was rezoned with a Statement of Conditions. The City Clerk shall maintain a listing of all lands rezoned with a Statement of Conditions.
4. The approved Statement of Conditions or an Affidavit or Memorandum giving notice thereof shall be filed by the City with the County Register of Deeds. The City Council shall have authority to waive this requirement if it determines that, given the nature of the conditions and/or the timeframe within which the conditions are to be satisfied, the recording of such a document would be of no material benefit to the City or to any subsequent owner of the land.
5. Upon the rezoning taking effect, the 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.

F. Compliance with Conditions.

1. Any person who establishes a development or commences a use upon land that has been rezoned with conditions shall continuously operate and maintain the development or use in compliance with all the conditions set forth in the Statement of Conditions. Any failure to comply with a condition contained within the Statement of Conditions shall constitute a violation of this Ordinance and be punishable accordingly.
2. No permit or approval shall be granted under this Ordinance for any use or development that is contrary to an applicable Statement of Conditions.

G. Time Period for Establishing Development or Use.

Unless another time period is specified in the Ordinance, the approved development and/or use of the land pursuant to building or other required permits must be commenced upon the land within one (1) year after the rezoning took effect and thereafter proceeded diligently to completion. This time limitation may upon written request be extended by the City Council if:

1. it is demonstrated to City Council's reasonable 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 Council 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.

H. Reversion of Zoning.

If the approved development and/or use of the rezoned land does not occur within the timeframe specified under **subsection G** above, then the land shall revert to its former zoning classification. The reversion process shall be initiated by the City Council requesting that the Planning Commission proceed with consideration of rezoning of the land to its former zoning classification. The procedure for considering and making this reversionary rezoning shall be the same as applies to all other rezoning requests.

I. Subsequent Rezoning of Land.

When land that is rezoned with a 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 H** above or otherwise, the Statement of Conditions imposed under the former zoning classification shall cease to be in effect. The City Clerk shall record with the County Register of Deeds that the Statement of Conditions is no longer in effect.

J. Amendment of Conditions.

1. During the time period for commencement of an approved development and/or use specified pursuant to **subsection G** above or during any extension thereof granted by the City Council, the City 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 rezoning and Statement of Conditions.

K. City Right to Rezone.

Nothing in the Statement of Conditions or 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 (Act 110 of the Public Acts of 2006, as amended)**.

L. Failure to Offer Conditions.

The City shall not require any 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.

Re-number remaining sections in Article 10 as follows (text within each section shall remain):

10.4 Protest Petition

10.5 Severability

10.6 Interpretation

10.7 Vested Right

10.8 Repeal and Savings Clause

10.9 Enactment and Effective Date

SECTION 2: SEVERABILITY

If any clause, sentence, paragraph or part of this Ordinance shall for any reason be finally adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment is rendered.

SECTION 3: SAVING CLAUSE

The City of Alpena Zoning Ordinance, except as herein or heretofore amended, shall remain in full force and effect. The amendments provided herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending fee, assessments, litigation, or prosecution of any right established, occurring prior to the effective date hereof.

SECTION 4: EFFECTIVE DATE

The ordinance changes shall take effect upon the expiration of seven days after the publication of the notice of adoption.

Mayor

Clerk

I, _____, Clerk for the City of Alpena, hereby certify that the foregoing is a true and correct copy of Ordinance No. _____ of 2021 of the City of Alpena, adopted by at a meeting of the Alpena City Council held on _____.

A copy of the complete ordinance text may be inspected or purchased at the Alpena City Hall, at 208 N. First Avenue, Alpena, Michigan.

Adopted: _____ Published: _____ Effective: _____, subject to PA 110 of 2006 as amended.