



**CITY OF NOVI CITY COUNCIL
AUGUST 9, 2021**

SUBJECT: Consideration of Introduction of Ordinance No. 18.297, an Ordinance to amend the City of Novi Code of Ordinances, Ordinance 14-271, the City of Novi Zoning Ordinance, as amended, at Article 2, Definitions, in order to revise the definition of Planned Rezoning Overlay (PRO) Conditions, and at Article 7.0, "Administration, Appeals, and Enforcement," Section 7.13, Amendments to Ordinance, subsection 2, Planned Rezoning Overlay (PRO), in order to comprehensively revise the requirements of the Ordinance with respect to intent, eligibility, approval, procedure, effect of approval, amendment, expiration and extension, and effective date. **FIRST READING.**

SUBMITTING DEPARTMENT: City Manager, Community Development

BACKGROUND INFORMATION:

The Ordinance Review Committee (ORC) met over the course of several months to review the City's existing Planned Rezoning Overlay (PRO) ordinance provisions. The consideration of the PRO ordinance was prompted by recent comments and discussion at the City Council and Planning Commission level as to whether the language of the ordinance needed to be updated to address the review criteria and, perhaps more importantly, a possible role for the City Council in reviewing and commenting on PRO applications before the Planning Commission process has already been completed.

The ORC reviewed the attached draft ordinance changes as prepared by the City Attorney's office. The ordinance was referred to the City Council as a whole to consider the amendments and refer the ordinance to the Planning Commission for review and a public hearing. The City Council considered the matter of this amendment at the June 7th meeting and referred the ordinance amendments to the Planning Commission. On June 23rd the Planning Commission considered the proposed ordinance amendments and made a motion to set the public hearing. The Planning Commission held the public hearing on July 28, 2021, and made a favorable recommendation of the amendments to the City Council.

The draft ordinance was shared with members of the development community in advance of the public hearing. The only comments Planning staff received were related to existing PRO Agreements, or those projects that are currently in the PRO process. The ordinance currently addresses both of those situations.

The City Attorney's Office has provided the following summary of proposed changes to the PRO Ordinance:

- Rearranges the ordinance into what is hopefully a more readable flow.
- Adds some concepts to the intent section—including confirmation that this is a fully optional form of development, at the City's discretion.
- Confirms in a number of places that City Council is the ultimate decision maker with regard to the PRO process.
- Clarifies what needs to be in the concept plans.
- Specifically authorizes, at the City's discretion, combining the concept plan approval with a potentially more detailed preliminary site plan approval.
- Clarifies/restates standards for securing ordinance deviations.
- Clarifies/restates the sorts of things that are required as PRO conditions in order to induce the City to utilize the PRO process.
- Adds directly to the ordinance the requirement/expectation in the City's site plan manual that a PRO must go to the Master Plan and Zoning Committee (MPZ) of the Planning Commission—which is often a helpful experience for both the developer and the City.
- Adds a place in the process for the City Council to have some input prior to the full hearing at the Planning Commission.

Following the Planning Commission's consideration, the only thing of significance added to the draft now in front of Council were some clarifications in the "Expiration" section of the ordinance (pages 14-15) that clarify that, if the City and the applicant agree, the PRO will not simply expire by virtue of non-activity for a period of two years, but will continue to run with the land, in the nature of a deed restriction.

RECOMMENDED ACTION:

Motion to introduce Ordinance No. 18.297, an Ordinance to amend the City of Novi Code of Ordinances, Ordinance 14-271, the City of Novi Zoning Ordinance, as amended, at Article 2, Definitions, in order to revise the definition of Planned Rezoning Overlay (PRO) Conditions, and at Article 7.0, "Administration, Appeals, and Enforcement," Section 7.13, Amendments to Ordinance, subsection 2, Planned Rezoning Overlay (PRO), in order to comprehensively revise the requirements of the Ordinance with respect to intent, eligibility, approval, procedure, effect of approval, amendment, expiration and extension, and effective date. **FIRST READING.**

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, ORDINANCE 14-271, THE CITY OF NOVI ZONING ORDINANCE, AS AMENDED, AT ARTICLE 2, DEFINITIONS, IN ORDER TO REVISE THE DEFINITION OF PLANNED REZONING OVERLAY (PRO) CONDITIONS, AND AT ARTICLE 7.0, "ADMINISTRATION, APPEALS, AND ENFORCEMENT," SECTION 7.13, AMENDMENTS TO ORDINANCE, SUBSECTION 2, PLANNED REZONING OVERLAY (PRO), IN ORDER TO COMPREHENSIVELY REVISE THE REQUIREMENTS OF THE ORDINANCE WITH RESPECT TO INTENT, ELIGIBILITY, APPROVAL, PROCEDURE, EFFECT OF APPROVAL, AMENDMENT, EXPIRATION AND EXTENSION, AND EFFECTIVE DATE.

THE CITY OF NOVI ORDAINS:

Part I.

That the City of Novi Zoning Ordinance, as amended, Article 2, Definitions, the definition of Planned Rezoning Overlay (PRO) Conditions, is hereby amended to include the following definition:

Planned Rezoning Overlay (PRO) Conditions: The conditions ~~proposed by the applicant and~~ approved by the City Council as part of an approval under Section 7.13, including review and recommendation by the Planning Commission, which ~~together with the PRO Agreement and PRO Plan~~ shall constitute regulations for and in connection with the development and use of property approved with a PRO in conjunction with a zoning amendment.

Part II.

That the City of Novi Zoning Ordinance, as amended, Article 7, Administration, Appeals, and Enforcement, Section 7-13, Amendments to Ordinance, Subsection 2, Planned Rezoning Overlay, is hereby amended to read as follows in its entirety:

2. Planned Rezoning Overlay (PRO)

A. ~~Intent~~Optional form of development subject to City Council approval; intent.

The Planning Commission and City Council have recognized that, in certain instances, it would be an advantage to both the City and to property owners

seeking ~~Rezoning~~ rezoning if a ~~site-detailed~~ plan of the proposed improvements, along with conditions and limitations that ~~may~~ can be relied upon by the City, 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 to request~~ approval of a rezoning with a Planned Rezoning Overlay (PRO) that would establish a ~~site-site~~-specific use authorization under Section 503 of the Michigan Zoning Enabling Act (MZEA), Act 110 of 2006, being MCL 125.3503, so as to accomplish, among other things, the objectives of the zoning ordinance through a land development project review process based upon the application of site planning criteria to achieve integration of the proposed land development project with the characteristics of the project area.

The development authorized under this Section shall be considered an optional means of development only upon terms acceptable to the City. The provision of this option imposes no obligation on the City to encourage or foster its use. The decision whether to approve the use of this option shall be at the sole discretion of the City Council. This PRO option shall not be considered to be a conditional rezoning under Section 405 of the MZEA.

Through the review process and the use of an agreement recorded at the Oakland County Register of Deeds, this option permits flexibility in the regulation of land development in a way that provides benefits to both the City and the property owner, through a negotiated development ~~approval~~-agreement approved by the City, while ensuring that the land use or activity authorized will be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land use and that the land use or activity is consistent with the public health, safety, and welfare of the City.

- ~~A. PRO Conditions shall not authorize uses or development not permitted in the district proposed by the zoning (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 125.3504:~~
- ~~i. The location, size, height or other measure for and/or of buildings, structures, improvements, set backs, landscaping, buffers, design, architecture and other features shown on the PRO Plan.~~
 - ~~ii. Specification of maximum density or intensity of development and/or use, expressed in terms fashioned for the particular development and/or use, for example, and in no respect by way of limitation, units per acre, maximum usable floor area, hours of operation, and the like.~~
 - ~~iii. Preservation of natural resources and/or features.~~
 - ~~iv. Facilities to address drainage/water quality.~~
 - ~~v. Facilities to address traffic issues.~~
 - ~~vi. Preservation of open space.~~

- vii. ~~A written understanding for permanent maintenance of natural resources, features, and/or facilities to address drainage/water quality, traffic, open space and/or other features or improvements; and, provision for authorization and finance of maintenance by or on behalf of the City in the event the property owner(s) fail(s) to timely perform after notice.~~
- viii. ~~Other provisions proposed by the applicant and approved by the City.~~
- ix. ~~Signage, lighting, landscaping, building materials for the exterior of some or all structures.~~
- x. ~~Permissible uses of the property.~~

B. ~~Authorization and~~ Election by property owner; Eligibility

- i. A property owner shall have the option of making an election under this Section 7.13.2 in connection with a submission of a petition seeking a rezoning. Such election may be made at the time the application for rezoning is filed, or at a subsequent point in the process of review of the proposed rezoning. The election shall be made by filing an application provided by the City conforming with this section for approval of a PRO that would establish a site-specific use authorization if the petition for rezoning is granted. Such election shall be to seek a rezoning with PRO pursuant to Section 503 of the ~~Michigan Zoning Enabling Act~~MZEA, MCL 125.3503, as amended, which would represent a legislative amendment of this Ordinance under that statutory provision.
- ii. In order to be eligible for the proposal and review of a rezoning with PRO, a property owner must propose a ~~Rezoning~~ rezoning of property to a new zoning district classification, and must, as part of such proposal, voluntarily offer propose clearly-identified certain specific site-specific regulations (to be set forth on a PRO Plan and in a PRO Agreement to be prepared) which conditions relating to the proposed improvements that are, (1) are in material respects, more strict or limiting than the regulations that would apply to the land under the proposed new zoning district, including such regulations or conditions as set forth in subparagraphs (1) through (10) of the definition of "Planned Rezoning Overlay Conditions", Subsection C above/below; and (2) constitute an overall benefit to the public that outweighs any material detriments or that could not otherwise be accomplished without the proposed rezoning.
- iii. The applicant for a PRO shall follow the procedures and provide the information required for a PRO application as set forth in the City's Site Plan and Development Manual, as amended.

C. Approval of ~~Rezoning~~ rezoning with ~~Planned Rezoning Overlay~~ PRO

- i. Submission of application required. Pursuant to Section 503 of the ~~Michigan Zoning Enabling Act~~MZEA, MCL 125.3503, as amended, the City Council, following a public hearing ~~at and held~~ recommendation by the Planning

Commission and its recommendation hereunder, may approve a petition for a rezoning with a PRO ~~requested by a property owner~~.

a. Components of the PRO. As an integral part of the PRO, the following shall be ~~reviewed and may be approved~~required:

(1) The PRO Plan as initially submitted shall be a conceptual plan showing the general layout and dimensions of the proposed physical improvements to the site that shall be shown in sufficient detail and allow the verification of any proposed ordinance deviations and any conditions being offered, including the following:~~A PRO Plan, with The plan shall be a schematic land use plan containing enough detail to explain the location of land use areas, the streets providing access to the site and pedestrian and vehicular circulation within the site; dwelling unit density and types; and buildings or floor areas contemplated; the manner in which open space will be provided and natural features will be affected or preserved.~~

a. The location of existing and proposed buildings;

b. Proposed uses within the buildings and on all affected property;

c. Proposed curb cuts, parking, streets, and drives;

d. Preliminary landscape plan;

e. Preliminary engineering plan and stormwater facilities;

f. Site survey and legal description; and

g. All items as shown or required on the rezoning application form.

h. Locations of all lakes, streams, rivers, ponds, and drainage ways, and any existing regulated woodlands on-site, and any proposed impacts to those features.

The PRO Plan may also include:

a. Building floor plans and building elevations;

b. The total number of buildings and dwelling units by type (e.g., one-bedroom, two-bedroom, and the

square footage of the same) if multiple family zoning or use is proposed;

c. A plan showing the required open space calculations;

d. Phasing plan, if proposed;

e. Locations of all lakes, streams, rivers, ponds, and drainage ways, and any existing regulated woodlands on-site, and any proposed impacts to those features;

fe. Location and size of proposed site signage; and

gf. Other items as may be determined by the City.

The final approved PRO Plan shall include such detail and inclusions proposed by the applicant and approved as shall be required by the City Council in accordance with this Section, following recommendation by the Planning Commission. The approved PRO Plan shall not replace the requirement for preliminary and final site plan review and approval, or subdivision or condominium approval, as the case may be, which shall be required as set forth below. However, at the City's sole option, the applicant may be permitted to combine the PRO Plan approval and preliminary site plan approval processes into one application, in which case the PRO application and PRO Plan shall provide all the information required for site plan approval under this Ordinance, the City Code, and the City's Site Plan Development Manual.

(1)(2) Planned Rezoning Overlay PRO Conditions. These conditions to the PRO approval as defined for purposes of this Section, which are an integral part of the development approval process as described herein and shall be required by the City Council following recommendation by the Planning Commission. The PRO Conditions shall not authorize uses of land 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).

(3) A PRO Agreement. This document, which shall be prepared by the City Attorney, reviewed and commented upon by or on behalf of and the applicant (or designee,) and approved by the City Council. It, and which shall incorporate the PRO Plan and set forth the PRO Conditions and any additional

conditions imposed pursuant to MCL 125.3504, as amended, together with any other terms mutually agreed upon by the parties (including the minimum provisions specified in the definition of PRO Agreement, above).

(4) PRO Deviations. As part of its review and approval of the PRO, the City Council may authorize deviations from height, area, and bulk standards (but not use or density standards) of this Ordinance. The City Council may also, to the extent permitted, authorize as part of its approval deviations from other regulations (e.g., design and construction standards, sign regulations, and the like). These deviations shall be reduced to writing and shown on the PRO Plan and also listed in the PRO Agreement.

~~b.~~ (5) Narrative. The PRO application shall include a written narrative explaining the development project and any proposed PRO Conditions and requested PRO Deviations. All such Conditions and Deviations shall be described in as much detail as is possible at the time of application. The narrative shall identify in text the intended land uses, the site-specific limitations and restrictions proposed, and the benefits to the public that are required to be provided as the basis for the PRO as set forth in the Standards for Approval in subsection (ii) below.

~~e.b.~~ Manner of designation on zoning map. If approved, the zoning district classification of the rezoned property shall consist of the district to which the property has been rezoned, accompanied by a reference to "PRO, Planned Rezoning Overlay." The Zoning Map shall specify the new zoning district ~~plus-including~~ a reference to "PRO", e.g., the district classification for the property might be "RM-1, Low Density, Low-Rise Multiple Family with PRO, Planned Rezoning Overlay," with a Zoning Map Designation of "RM-1/PRO." Development and use of the property so classified and approved shall be restricted to the permission granted in the PRO Plan and PRO Agreement, subject to the PRO Conditions, and no other development or use shall be permitted.

~~d.c.~~ Compliance with underlying district regulations; PRO Deviations. The use of the property in question shall, subject to sub-paragraphs (i) and (ii), below, be in total conformity with all regulations governing development and use within the zoning district to which the property has been rezoned, including, without limitation, permitted uses, lot sizes, setbacks, height limits, required facilities, buffers, open space areas, and land use density; provided, however, the following shall apply:

(1) Restrictions/limitations not required by ordinance. Development and use of the property shall propose and be subject to, following City Council review and approval, be subject to the more restrictive requirements shown, depicted, or specified on the PRO Plan, and/or in the PRO Conditions imposed, and/or in other conditions and provisions set forth in the PRO Agreement, that are more restrictive, in ways that are material and identifiable and capable of being shown or described and as required in this Ordinance. required as part of the PRO approval, and Ssuch PRO Plan and, PRO Cconditions, and PRO Agreement shall overlay and supersede all inconsistent regulations ~~otherwise applicable~~otherwise applicable under this Ordinance.

(2) PRO Deviations. As part of the grant of final approval of a PRO, the City Council shall be authorized to grant deviations from the strict terms of this Ordinance governing dimensional requirements on the property~~;~~.

Deviations granted hereunder shall be justified by documentation provided by the applicant in a form sufficient to allow recommendation by the Planning Commission and acceptable to the City Council. This documentation may include, at the City's discretion, additional traffic or infrastructure studies, environmental studies, market assessments, or the like beyond those required by ordinance or the Site Plan Manual.

The City may, at its discretion, consider the following in determining whether to grant each such deviation:

- a. The PRO Plan, with the deviation, demonstrates an innovative, unified, planned approach to developing the site that has resulted in a proposal for a higher quality development than the City could otherwise require, and that the Ordinance standard, provided, such authorization to grant deviations shall be conditioned upon the Council finding that each Zoning Ordinance provision sought to be deviated would, if the deviation were not granted, would likely prohibit an enhancement of the development that would be in the public interest or would significantly impair the use or operation of the overall development, and that approving the deviation would be consistent with the City Master Plan and compatible with the surrounding area.

- b. The applicant has proposed measures that will eliminate, minimize, or mitigate any negative impacts of the deviation, and that the deviation will not be detrimental to the public health, safety, or welfare of the occupants of the development, the surrounding neighborhood, or the City as a whole.
- c. The PRO Plan, with the deviation, meets the standards for approval under this Section, including the provision of restrictions or limitations on the use or development not otherwise required by the Ordinance.

ii. Standards for approval. The City Council shall apply the following standards in evaluating and acting upon the PRO and shall make the specific findings required hereunder. While the City Council shall have the full discretion afforded it by law to determine whether to grant the application under this option, the ~~applicant shall have the burden of demonstrating that the following requirements and standards are met by the PRO Plan, Conditions, and PRO Agreement:~~

a. ~~Approval of the application~~ The PRO shall accomplish ~~es, among other things, and as determined in the discretion of the City Council,~~ the integration of the proposed land development project with the characteristics of the project area in such a manner that, ~~and~~ results in an enhancement of the project area as compared to the existing zoning , ~~and such enhancement~~ that would be unlikely to be achieved, or would not be assured, in the absence of the use of a PRO.

b. Sufficient conditions shall have been included on and in the PRO Plan and the PRO Agreement ~~on the basis of which~~ such that the City Council concludes, in its discretion, that, as compared to the existing zoning and considering the ~~site-site~~ specific land use proposed by the applicant, it would be in the public interest to grant the rezoning with PRO. ; ~~provided, i~~ n 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 City Council, following recommendation by the Planning Commission, and also taking into consideration the special knowledge and understanding of the City by the City Council and Planning Commission.

The PRO Conditions shall not authorize uses or development not permitted in the district proposed by the zoning (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 that may be imposed by the City under MCL 125.3504:

- (1) Establishment of development features such as the location, size, height, area, or mass of buildings, structures, or other improvements in a manner that cannot be required under the Ordinance or the City's Code of Ordinances, to be shown on the PRO Plan.
- (2) Specification of the maximum density or intensity of development and/or use, as shown on the PRO Plan and expressed in terms fashioned for the particular development and/or use (for example, and in no respect by way of limitation, units per acre, maximum usable floor area, hours of operation, and the like).
- (3) Provision for setbacks, landscaping, and other buffers in a manner that exceeds what the Ordinance of the Code of Ordinances can require.
- (4) Exceptional site and building design, architecture, and other features beyond the minimum requirements of the Ordinance or the Code of Ordinances.
- (5) Preservation of natural resources and/or features, such as woodlands and wetlands, in a manner that cannot be accomplished through the Ordinance or the Code of Ordinances and that exceeds what is otherwise required. If such areas are to be affected by the proposed development, provisions designed to minimize or mitigate such impact.
- (6) Limitations on the land uses otherwise allowed under the proposed zoning district, including, but not limited to, specification of uses that are permitted and those that are not permitted.
- (7) Provision of a public improvement or improvements that would not otherwise be required under the ordinance or Code of Ordinances to further the public health, safety, and welfare, protect existing or planned uses, or alleviate or lessen an existing or potential problem relating to public facilities. These can include, but are not limited to, road and infrastructure improvements; relocation of overhead utilities; or other public facilities or improvements.

- (8) Improvements or other measures to improve traffic congestion or vehicular movement with regard to existing conditions or conditions anticipated to result from the development.
- (9) Improvements to site drainage (storm water) or drainage in the area of the development not otherwise required by the Code of Ordinances.
- (10) Limitations on signage.
- (11) Creation or preservation of public or private parkland or open space.
- (12) Other representation, limitations, improvements, or provisions approved by the City Council.

The restrictions, limitations, promises, undertakings, and conditions that are set forth in the PRO Plan, PRO Conditions, and PRO Agreement will run with the land and be enforceable in perpetuity unless amended by mutual agreement of the City and the property owner. There shall, where required by the City, be a written understanding for the permanent maintenance of any improvements or beneficial provisions made a condition of approval hereunder, including a method for paying for the cost of same, including the construction or maintenance of same by the property owner, or by or on behalf of the City in the event the property owner fails to timely perform after notice.

c. In the discretion of the City Council, it shall be determined that there is compliance with Compliance with all of the General Standards for the approval of uses subject to special conditions are met, as enumerated in Section 6.1.2.C.

~~iii.i. Unless extended by the City Council for good cause, the rezoning with PRO shall expire following a period of two (2) years from the effective date of the PRO 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-year period and proceeds diligently and in good faith as required by the ordinance to completion.~~

~~a. In the event bona fide development has not commenced within two (2) years from the effective date of the rezoning, the rezoning and PRO shall be void and of no effect.~~

~~b. If development and/or actions are undertaken on or with respect to the property in violation of the PRO Agreement, such development and/or actions shall constitute a nuisance per se. In such case, the City may issue a stop work order relative to the property and seek~~

~~any other lawful remedies. Until curative action is taken to bring the property into compliance with the PRO Agreement, the City may withhold, or, following notice and an opportunity to be heard, revoke permits and certificates, in addition to or in lieu of such other lawful action to achieve compliance.~~

~~e.b. The City Council may grant an extension of the rezoning with PRO 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:~~

~~(1) The applicant has demonstrated that required utility services have been delayed;~~

~~(2)(1) 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;~~

~~(3)(1) The applicant has demonstrated that unforeseen economic events or conditions have caused delays;~~

~~(4)(1) The approved PRO Plan to be extended is in compliance with all current site plan criteria and current ordinances, laws, codes, and regulations;~~

~~(5)(1) There is no pending zoning ordinance amendment that would otherwise substantially change the requirements of final site plan approval for the approved PRO Plan.~~

~~iv.i. If the rezoning with PRO becomes void in the manner provided in **subsection 7.13.2.D.iii.a**, either or both of the following actions may be taken:~~

~~a. The property owner may seek a new Rezoning of the property; and/or~~

~~b.a. The City may initiate a new Rezoning of the property to a reasonable district classification in accordance with the procedure provided by law for Rezonings in cities. Until such time as a new zoning district classification of the property has become effective, no development shall be undertaken or permits for development issued.~~

D. Procedure for Application, Review and Approval

The City Council is the decision-making body for purposes of this optional form of development as a legislative action. The Planning Commission's recommendation is not binding on the City Council.

i. *Application.* At the time of making application for amendment of this ordinance seeking a **Rezoning rezoning** of property, or at a later time during the process of City consideration of such **Rezoning rezoning**, a property

owner may submit an application for approval of a PRO to apply in conjunction with the ~~Rezoning~~rezoning. The application, ~~which may be amended during the process of consideration,~~ shall include a PRO Plan proposed by the applicant and shall specify the PRO Conditions proposed by the applicant, recognizing that PRO Conditions shall not authorize uses or development not permitted in the district proposed by the Rezoning shall include the information described in Section C above, including a statement regarding eligibility for PRO approval under Subsection 2.B.ii.

- ii. *Initial staff review and report.* Upon submission of a complete application, the Community Development Department shall undertake a review of the application (with the assistance consultants, if desired by staff) and prepare an initial report regarding the application for review by the Planning Commission and City Council, including such information and comment as the Department deems appropriate.
- iii. *Initial submission to Planning Commission and City Council for eligibility reviews.* Before the application is submitted to the Planning Commission for formal ~~non-binding preliminary comments-~~ action, it shall be submitted to the Planning Commission for an initial review of eligibility of the application under Subsection 2.B.ii above. The submission shall be informational only, although the Planning Commission members shall have the opportunity to review and make comments upon the eligibility of the proposal. The Planning Commission's review and comments, shall not constitute a recommendation and shall not be binding upon the applicant or the City. This initial meeting of the Planning Commission shall also be noticed as a public hearing before the on a proposed legislative amendment of the Zoning Ordinance pursuant to Section 503 of the MZEA.

Within 45 days after the submission to the Planning Commission, the application shall be forwarded to the City Council, which shall have a similar opportunity to review and comment upon the eligibility of the proposal. The Planning commission shall make a recommendation to the City Council as to whether the application appears to be eligible for approval. the Planning Commission's recommendation shall be forwarded to the City Council, which shall within 45 days make its initial determination as to eligibility under Subsection 2.B.ii. The City Council's determination is review and comments shall not constitute a recommendation and shall not be binding on the applicant or the City. A finding by the City Council that the application does not appear to meet the eligibility requirements of this Ordinance is not a determination that the PRO will be approved or not approved. It is The initial reviews of both the Planning Commission and the City Council are intended to provide only an initial indication to the applicant as to whether an applicant should proceed to proceed to a formal submission of the PRO application.

The City Council may undertake such additional investigation, study, and/or deliberation before it makes its determination under this provision. Regardless of the City Council's determination hereunder, the applicant

~~may continue the application process and make a formal submission of its application under the following Subsection. The applicant may make changes, additions, or deletions to its application as a result of the Planning Commission's recommendation—and/or the City Council's determination comments as to eligibility before making its formal submission.~~

~~i.iv. *Formal submission of application; Planning Commission action.* Following the initial review process described above, and before submission to the Planning Commission for aciton, the Community Development Plan Review Center shall undertake a full staff review of the application. The proposed rezoning with PRO, together, shall be noticed for public hearing before the Planning Commission as a proposed legislative amendment of the Zoning Ordinance pursuant to Section 503 of the Michigan Zoning-Enabling ActMZEA, MCL 125.3503, as amended. The Planning Commission may hold a preliminary meeting to discuss the application before setting it for public hearing. Following the public hearing, and further deliberations as deemed appropriate by the Planning Commission, the Planning Commission shall make a recommendation to the City Council on the proposed rezoning with PRO. The recommendation may be to deny, to approve, or to approve with conditions.~~

vii. *City Council action on PRO application.* Upon receipt of the recommendation of the Planning Commission, the City Council shall commence deliberations on the proposed rezoning with PRO. If the City Council determines that it may approve the rezoning with PRO, the City Council shall specify tentative conditions under Section 504 of the Michigan Zoning-Enabling ActMZEA, MCL 125.3504, as amended, and direct the City Attorney to work with the applicant in the development of a proposed PRO Agreement. Upon completion of the PRO Agreement, the City Council shall make a final determination to approve, approve with conditions, or deny the rezoning with PRO.

E. **Effect of Approval.** Approval of the PRO Plan and ~~agreement~~ PRO Agreement confirms only the rezoning of the property, subject to any conditions imposed as reflected in the PRO Plan and after recordation as set forth in Paragraph H below. Approval of the usual preliminary site plan and final site plan as set forth in Section 6.1 shall be required before any improvements to the property may be undertaken. ~~As described in Section C above, the applicant may, with the City's approval, pursue PRO Plan approval and preliminary site plan approval commensurately. However, once an area has been included with within a PRO Plan that has been recorded, no development may take place in such area nor may any use thereof be made except in accordance with such PRO Plan and PRO Agreement or in accordance with a Council-approved amendment thereto, unless the plan expires as provided herein.~~

F. **Amendment of PRO Agreement.** Amendment of an ~~an~~ approved and recorded PRO Agreement shall be proposed, reviewed, and approved in the same manner

as a new rezoning with PRO. Notwithstanding the foregoing, minor modifications to the approved PRO Plan can be approved administratively if the Zoning Ordinance would otherwise allow an administrative site plan review and approval, so long as the City Planner determines that the modifications (i) are minor, (ii) do not deviate from the general intent of the PRO Plan, and (iii) result in reduced impacts on the surrounding development and existing infrastructure. The City Planner may also defer the question to the Planning Commission. The Planning Commission shall also be permitted to authorize minor amendments to the PRO Plan in its review of the preliminary site plans with regard to parking-related, landscaping-related, and façade-related requirements, provided that it would otherwise have that authority under the Zoning Ordinance and such amendments would not be inconsistent with the PRO Conditions or the PRO Agreement. The Planning Commission may also defer the question to the City Council.

G. **Recordation of PRO Agreement.** A rezoning with PRO shall become effective following publication in the manner provided by law and City Charter, and, after recordation of the PRO Agreement, whichever is later.

H. **Fee.** The applicant for a rezoning with PRO shall pay as a fee the City's costs and expenses incurred by the City in the review of and preparation of documents for a rezoning with PRO. An escrow shall be established in an amount specified by City Council Resolution, and additional reasonable amounts shall be contributed as required in order to complete the process of review and approval. Any unexpended amounts from such escrow shall be returned to the applicant.

I. **Expiration; extension.** Unless otherwise agreed to by City and the applicant as documented in the PRO Agreement, extended by the City Council for good cause, the rezoning with PRO shall expire following a period of two (2) years from the effective date of the PRO 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-year period and proceeds diligently and in good faith as required by the ordinance to completion, subject to the following.

i. In the event bona fide development has not commenced within two (2) years from the effective date of the rezoning, the rezoning and PRO shall be void and of no effect, unless otherwise provided in the PRO Agreement, which may provide that the terms and conditions of the PRO shall not expire and shall run with the land and be in the nature of a deed restriction. No approved PRO Plan shall expire after development commences, except with the approval of the Council and of all parties in interest in the land.

ii. If development and/or actions are undertaken on or with respect to the property in violation of the PRO Agreement, such development and/or actions shall constitute a nuisance per se. In such case, the City may issue a stop work order relative to the property and seek any other lawful remedies. Until curative action is taken to bring the property into compliance with the PRO Agreement, the City may withhold, or, following

notice and an opportunity to be heard, revoke permits and certificates, in addition to or in lieu of such other lawful action to achieve compliance.

iii. ~~For good cause,~~ the City Council may grant an extension of the rezoning with PRO 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:

- a. The applicant has demonstrated that required utility services have been delayed;
- b. 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;
- c. The applicant has demonstrated that unforeseen economic events or conditions have caused delays;
- d. The approved PRO Plan to be extended is in compliance with all current site plan criteria and current ordinances, laws, codes, and regulations;
- e. There is no pending zoning ordinance amendment that would otherwise substantially change the requirements of final site plan approval for the approved PRO Plan.

iv. If the rezoning with PRO becomes void in the manner provided ~~herein subsection 7.13.2.D.iii.a,~~ either or both of the following actions may be taken:

- ~~_____ The property owner may seek a new Rezoning of the property; and/or~~
- a. The City ~~may~~will initiate a new Rrezoning of the property to a reasonable district classification in accordance with the procedure provided by law for Rrezonings in cities. Until such time as a new zoning district classification of the property has become effective, no development shall be undertaken or permits for development issued.
- b. The property owner may also seek a new rezoning of the property.

J. **Effective date.** The effective date of this ordinance amendment is _____, 2021. PROs that have been approved by City Council prior to that effective date are not to be considered non-conforming. The PRO Plans and PRO Agreements shall be and remain valid and effective. Any amendments to such PRO Plans and PRO Agreements, however, shall be subject to the requirements of this amended ordinance. The expiration and extension provisions shall apply to such PRO Plans.

PART III. 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 IV. 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 V. 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 VI. 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 _____, 2021.

ROBERT J. GATT, MAYOR

CORTNEY HANSON, CITY CLERK

Ayes:
Nays:
Abstentions:
Absent:

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, ORDINANCE 14-271, THE CITY OF NOVI ZONING ORDINANCE, AS AMENDED, AT ARTICLE 2, DEFINITIONS, IN ORDER TO REVISE THE DEFINITION OF PLANNED REZONING OVERLAY (PRO) CONDITIONS, AND AT ARTICLE 7.0, "ADMINISTRATION, APPEALS, AND ENFORCEMENT," SECTION 7.13, AMENDMENTS TO ORDINANCE, SUBSECTION 2, PLANNED REZONING OVERLAY (PRO), IN ORDER TO COMPREHENSIVELY REVISE THE REQUIREMENTS OF THE ORDINANCE WITH RESPECT TO INTENT, ELIGIBILITY, APPROVAL, PROCEDURE, EFFECT OF APPROVAL, AMENDMENT, EXPIRATION AND EXTENSION, AND EFFECTIVE DATE.

THE CITY OF NOVI ORDAINS:

Part I.

That the City of Novi Zoning Ordinance, as amended, Article 2, Definitions, the definition of Planned Rezoning Overlay (PRO) Conditions, is hereby amended to include the following definition:

Planned Rezoning Overlay (PRO) Conditions: The conditions approved by the City Council as part of an approval under Section 7.13, including review and recommendation by the Planning Commission, which together with the PRO Agreement and PRO Plan shall constitute regulations for and in connection with the development and use of property approved with a PRO in conjunction with a zoning amendment.

Part II.

That the City of Novi Zoning Ordinance, as amended, Article 7, Administration, Appeals, and Enforcement, Section 7-13, Amendments to Ordinance, Subsection 2, Planned Rezoning Overlay, is hereby amended to read as follows in its entirety:

2. Planned Rezoning Overlay (PRO)

A. Optional form of development subject to City Council approval; intent

The Planning Commission and City Council have recognized that, in certain instances, it would be an advantage to both the City and to property owners seeking rezoning if a detailed plan of the proposed improvements, along with

conditions and limitations that can be relied upon by the City, 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 to request approval of a rezoning with a Planned Rezoning Overlay (PRO) that would establish a site-specific use authorization under Section 503 of the Michigan Zoning Enabling Act (MZEA), Act 110 of 2006, being MCL 125.3503, so as to accomplish, among other things, the objectives of the zoning ordinance through a land development project review process based upon the application of site planning criteria to achieve integration of the proposed land development project with the characteristics of the project area.

The development authorized under this Section shall be considered an optional means of development only upon terms acceptable to the City. The provision of this option imposes no obligation on the City to encourage or foster its use. The decision whether to approve the use of this option shall be at the sole discretion of the City Council. This PRO option shall not be considered to be a conditional rezoning under Section 405 of the MZEA.

Through the review process and the use of an agreement recorded at the Oakland County Register of Deeds, this option permits flexibility in the regulation of land development in a way that provides benefits to both the City and the property owner, through a negotiated development agreement approved by the City, while ensuring that the land use or activity authorized will be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land use and that the land use or activity is consistent with the public health, safety, and welfare of the City.

B. Election by property owner; eligibility

- i. A property owner shall have the option of making an election under this Section 7.13.2 in connection with a submission of a petition seeking a rezoning. Such election may be made at the time the application for rezoning is filed, or at a subsequent point in the process of review of the proposed rezoning. The election shall be made by filing an application provided by the City conforming with this section for approval of a PRO that would establish a site-specific use authorization if the petition for rezoning is granted. Such election shall be to seek a rezoning with PRO pursuant to Section 503 of the MZEA, MCL 125.3503, as amended, which would represent a legislative amendment of this Ordinance under that statutory provision.
- ii. In order to be eligible for the proposal and review of a rezoning with PRO, a property owner must propose a rezoning of property to a new zoning district classification, and must, as part of such proposal, propose clearly-identified site-specific conditions relating to the proposed improvements that (1) are in material respects, more strict or limiting than the regulations

that would apply to the land under the proposed new zoning district, including such regulations or conditions as set forth in Subsection C below; and (2) constitute an overall benefit to the public that outweighs any material detriments or that could not otherwise be accomplished without the proposed rezoning.

- iii. The applicant for a PRO shall follow the procedures and provide the information required for a PRO application as set forth in the City's Site Plan and Development Manual, as amended.

C. Approval of rezoning with PRO

- i. *Submission of application required.* Pursuant to Section 503 of the MZEA, MCL 125.3503, as amended, the City Council, following a public hearing held by the Planning Commission and its recommendation hereunder, may approve a petition for a rezoning with a PRO.

- a. *Components of the PRO.* As an integral part of the PRO, the following shall be required:

- (1) The PRO Plan as initially submitted shall be a conceptual plan showing the general layout and dimensions of the proposed physical improvements to the site that shall be shown in sufficient detail and allow the verification of any proposed ordinance deviations and any conditions being offered, including the following:

- a. The location of existing and proposed buildings;
- b. Proposed uses within the buildings and on all affected property;
- c. Proposed curb cuts, parking, streets, and drives;
- d. Preliminary landscape plan;
- e. Preliminary engineering plan and stormwater facilities;
- f. Site survey and legal description; and
- g. All items as shown or required on the rezoning application form.
- h. Locations of all lakes, streams, rivers, ponds, and drainage ways, and any existing regulated woodlands on-site, and any proposed impacts to those features.

The PRO Plan may also include:

- a. Building floor plans and building elevations;
- b. The total number of buildings and dwelling units by type (e.g., one-bedroom, two-bedroom, and the square footage of the same) if multiple family zoning or use is proposed;
- c. A plan showing the required open space calculations;
- d. Phasing plan, if proposed;
- e. Location and size of proposed site signage; and
- f. Other items as may be determined by the City.

The final approved PRO Plan shall include such detail as shall be required by the City Council in accordance with this Section, following recommendation by the Planning Commission. The approved PRO Plan shall not replace the requirement for preliminary and final site plan review and approval, or subdivision or condominium approval, as the case may be, which shall be required as set forth below. However, at the City's sole option, the applicant may be permitted to combine the PRO Plan approval and preliminary site plan approval processes into one application, in which case the PRO application and PRO Plan shall provide all the information required for site plan approval under this Ordinance, the City Code, and the City's Site Plan Development Manual.

- (2) PRO Conditions. These conditions to the PRO approval are an integral part of the development approval process as described herein and shall be required by the City Council following recommendation by the Planning Commission. The PRO Conditions shall not authorize uses of land not permitted in the district proposed by the rezoning, and shall not permit uses or development expressly or implicitly prohibited in the PRO Agreement.
- (3) PRO Agreement. This document shall be prepared by the City Attorney, reviewed and commented upon by or on behalf of the applicant, and approved by the City Council. It shall incorporate the PRO Plan and set forth the PRO Conditions and any additional conditions imposed pursuant to MCL 125.3504, as amended, together with any other terms mutually agreed upon by the parties (including the

minimum provisions specified in the definition of PRO Agreement, above).

(4) PRO Deviations. As part of its review and approval of the PRO, the City Council may authorize deviations from height, area, and bulk standards (but not use or density standards) of this Ordinance. The City Council may also, to the extent permitted, authorize as part of its approval deviations from other regulations (e.g., design and construction standards, sign regulations, and the like). These deviations shall be reduced to writing and shown on the PRO Plan and also listed in the PRO Agreement.

(5) Narrative. The PRO application shall include a written narrative explaining the development project and any proposed PRO Conditions and requested PRO Deviations. All such Conditions and Deviations shall be described in as much detail as is possible at the time of application. The narrative shall identify in text the intended land uses, the site-specific limitations and restrictions proposed, and the benefits to the public that are required to be provided as the basis for the PRO as set forth in the Standards for Approval in subsection (ii) below.

b. *Manner of designation on zoning map.* If approved, the zoning district classification of the rezoned property shall consist of the district to which the property has been rezoned, accompanied by a reference to "PRO, Planned Rezoning Overlay." The Zoning Map shall specify the new zoning district including a reference to "PRO"; e.g., the district classification for the property might be "RM-1, Low Density, Low-Rise Multiple Family with PRO, Planned Rezoning Overlay," with a Zoning Map Designation of "RM-1/PRO." Development and use of the property so classified and approved shall be restricted to the permission granted in the PRO Plan and PRO Agreement, subject to the PRO Conditions, and no other development or use shall be permitted.

c. *Compliance with underlying district regulations; PRO Deviations.* The use of the property in question shall, subject to sub-paragraphs (1) and (2), below, be in total conformity with all regulations governing development and use within the zoning district to which the property has been rezoned, including, without limitation, permitted uses, lot sizes, setbacks, height limits, required facilities, buffers, open space areas, and land use density; provided, however, the following shall apply:

(1) *Restrictions/limitations not required by ordinance.* Development and use of the property shall propose and be subject to, following City Council review and approval,

requirements shown, depicted, or specified on the PRO Plan, and/or in the PRO Conditions imposed, and/or in other conditions and provisions set forth in the PRO Agreement, that are more restrictive, in ways that are material and identifiable and capable of being shown or described and as required in this Ordinance. Such PRO Plan, PRO Conditions, and PRO Agreement shall overlay and supersede all inconsistent regulations otherwise applicable under this Ordinance.

- (2) *PRO Deviations.* As part of the grant of final approval of a PRO, the City Council shall be authorized to grant deviations from the strict terms of this Ordinance governing dimensional requirements on the property.

Deviations granted hereunder shall be justified by documentation provided by the applicant in a form sufficient to allow recommendation by the Planning Commission and acceptable to the City Council. This documentation may include, at the City's discretion, additional traffic or infrastructure studies, environmental studies, market assessments, or the like beyond those required by ordinance or the Site Plan Manual.

The City may, at its discretion, consider the following in determining whether to grant each such deviation:

- a. The PRO Plan, with the deviation, demonstrates an innovative, unified, planned approach to developing the site that has resulted in a proposal for a higher quality development than the City could otherwise require, and that the Ordinance standard, if the deviation were not granted, would likely prohibit an enhancement of the development that would be in the public interest or would significantly impair the use or operation of the overall development.
- b. The applicant has proposed measures that will eliminate, minimize, or mitigate any negative impacts of the deviation, and that the deviation will not be detrimental to the public health, safety, or welfare of the occupants of the development, the surrounding neighborhood, or the City as a whole.
- c. The PRO Plan, with the deviation, meets the standards for approval under this Section, including the provision of restrictions or limitations on the use

or development not otherwise required by the Ordinance.

ii. *Standards for approval.* The City Council shall apply the following standards in evaluating and acting upon the PRO and shall make the specific findings required hereunder. While the City Council shall have the full discretion afforded it by law to determine whether to grant the application under this option, the applicant shall have the burden of demonstrating that the following requirements and standards are met by the PRO Plan, Conditions, and PRO Agreement:

- a. The PRO accomplishes the integration of the proposed land development project with the characteristics of the project area in such a manner that results in an enhancement of the project area as compared to the existing zoning that would be unlikely to be achieved, or would not be assured, in the absence of the use of a PRO.
- b. Sufficient conditions have been included on and in the PRO Plan and the PRO Agreement such that the City 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 PRO. 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 City Council, following recommendation by the Planning Commission, and also taking into consideration the special knowledge and understanding of the City by the City Council and Planning Commission.

The PRO Conditions shall not authorize uses or development not permitted in the district proposed by the zoning (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 that may be imposed by the City under MCL 125.3504:

- (1) Establishment of development features such as the location, size, height, area, or mass of buildings, structures, or other improvements in a manner that cannot be required under the Ordinance or the City's Code of Ordinances, to be shown on the PRO Plan.

- (2) Specification of the maximum density or intensity of development and/or use, as shown on the PRO Plan and expressed in terms fashioned for the particular development and/or use (for example, and in no respect by way of limitation, units per acre, maximum usable floor area, hours of operation, and the like).
- (3) Provision for setbacks, landscaping, and other buffers in a manner that exceeds what the Ordinance of the Code of Ordinances can require.
- (4) Exceptional site and building design, architecture, and other features beyond the minimum requirements of the Ordinance or the Code of Ordinances.
- (5) Preservation of natural resources and/or features, such as woodlands and wetlands, in a manner that cannot be accomplished through the Ordinance or the Code of Ordinances and that exceeds what is otherwise required. If such areas are to be affected by the proposed development, provisions designed to minimize or mitigate such impact.
- (6) Limitations on the land uses otherwise allowed under the proposed zoning district, including, but not limited to, specification of uses that are permitted and those that are not permitted.
- (7) Provision of a public improvement or improvements that would not otherwise be required under the ordinance or Code of Ordinances to further the public health, safety, and welfare, protect existing or planned uses, or alleviate or lessen an existing or potential problem relating to public facilities. These can include, but are not limited to, road and infrastructure improvements; relocation of overhead utilities; or other public facilities or improvements.
- (8) Improvements or other measures to improve traffic congestion or vehicular movement with regard to existing conditions or conditions anticipated to result from the development.
- (9) Improvements to site drainage (storm water) or drainage in the area of the development not otherwise required by the Code of Ordinances.
- (10) Limitations on signage.

- (11) Creation or preservation of public or private parkland or open space.
- (12) Other representation, limitations, improvements, or provisions approved by the City Council.

The restrictions, limitations, promises, undertakings, and conditions that are set forth in the PRO Plan, PRO Conditions, and PRO Agreement will run with the land and be enforceable in perpetuity unless amended by mutual agreement of the City and the property owner. There shall, where required by the City, be a written understanding for the permanent maintenance of any improvements or beneficial provisions made a condition of approval hereunder, including a method for paying for the cost of same, including the construction or maintenance of same by the property owner, or by or on behalf of the City in the event the property owner fails to timely perform after notice.

- c. Compliance with all of the General Standards for the approval of uses subject to special conditions are met, as enumerated in Section 6.1.2.C.

D. Procedure for Application, Review and Approval

The City Council is the decision-making body for purposes of this optional form of development as a legislative action. The Planning Commission's recommendation is not binding on the City Council.

- i. *Application.* At the time of making application for amendment of this ordinance seeking a rezoning of property, or at a later time during the process of City consideration of such rezoning, a property owner may submit an application for approval of a PRO to apply in conjunction with the rezoning. The application shall include the information described in Section C above, including a statement regarding eligibility for PRO approval under Subsection 2.B.ii.
- ii. *Initial staff review and report.* Upon submission of a complete application, the Community Development Department shall undertake a review of the application (with the assistance consultants, if desired by staff) and prepare an initial report regarding the application for review by the Planning Commission and City Council, including such information and comment as the Department deems appropriate.
- iii. *Initial submission to Planning Commission and City Council for eligibility reviews.* Before the application is submitted to the Planning Commission for formal action, it shall be submitted to the Planning Commission for an initial review of eligibility of the application under Subsection 2.B.ii above. The submission shall be informational only, although the Planning

Commission members shall have the opportunity to review and make comments upon the eligibility of the proposal. The Planning Commission's review and comments shall not constitute a recommendation and shall not be binding upon the applicant or the City. This initial meeting of the Planning Commission shall also be noticed as a public hearing before the on a proposed legislative amendment of the Zoning Ordinance pursuant to Section 503 of the MZEA.

Within 45 days after the submission to the Planning Commission, the application shall be forwarded to the City Council, which shall have a similar opportunity to review and comment upon the eligibility of the proposal. The City Council's review and comments shall not constitute a recommendation and shall not be binding on the applicant or the City. The initial reviews of both the Planning Commission and the City Council are intended to provide only an initial indication to the applicant as to whether an applicant should proceed to a formal submission of the PRO application.

The applicant may make changes, additions, or deletions to its application as a result of the Planning Commission's and/or the City Council's comments as to eligibility before making its formal submission.

- iv. *Formal submission of application; Planning Commission action.* Following the initial review process described above, and before submission to the Planning Commission for action, the Plan Review Center shall undertake a full staff review of the application. The proposed rezoning with PRO shall be noticed for public hearing before the Planning Commission as a proposed legislative amendment of the Zoning Ordinance pursuant to Section 503 of the MZEA, MCL 125.3503, as amended. The Planning Commission may hold a preliminary meeting to discuss the application before setting it for public hearing. Following the public hearing, and further deliberations as deemed appropriate by the Planning Commission, the Planning Commission shall make a recommendation to the City Council on the proposed rezoning with PRO. The recommendation may be to deny, to approve, or to approve with conditions.
- vii. *City Council action on PRO application.* Upon receipt of the recommendation of the Planning Commission, the City Council shall commence deliberations on the proposed rezoning with PRO. If the City Council determines that it may approve the rezoning with PRO, the City Council shall specify tentative conditions under Section 504 of the MZEA, MCL 125.3504, as amended, and direct the City Attorney to work with the applicant in the development of a proposed PRO Agreement. Upon completion of the PRO Agreement, the City Council shall make a final determination to approve, approve with conditions, or deny the rezoning with PRO.

- E. **Effect of Approval.** Approval of the PRO Plan and PRO Agreement confirms only the rezoning of the property, subject to any conditions imposed as reflected in the

PRO Plan and after recordation as set forth in Paragraph H below. Approval of the usual preliminary site plan and final site plan as set forth in Section 6.1 shall be required before any improvements to the property may be undertaken. As described in Section C above, the applicant may, with the City's approval, pursue PRO Plan approval and preliminary site plan approval commensurately. However, once an area has been included within a PRO Plan that has been recorded, no development may take place in such area nor may any use thereof be made except in accordance with such PRO Plan and PRO Agreement or in accordance with a Council-approved amendment thereto, unless the plan expires as provided herein.

- F. **Amendment of PRO Agreement.** Amendment of an approved and recorded PRO Agreement shall be proposed, reviewed, and approved in the same manner as a new rezoning with PRO. Notwithstanding the foregoing, minor modifications to the approved PRO Plan can be approved administratively if the Zoning Ordinance would otherwise allow an administrative site plan review and approval, so long as the City Planner determines that the modifications (i) are minor, (ii) do not deviate from the general intent of the PRO Plan, and (iii) result in reduced impacts on the surrounding development and existing infrastructure. The City Planner may also defer the question to the Planning Commission. The Planning Commission shall also be permitted to authorize minor amendments to the PRO Plan in its review of the preliminary site plans with regard to parking-related, landscaping-related, and façade-related requirements, provided that it would otherwise have that authority under the Zoning Ordinance and such amendments would not be inconsistent with the PRO Conditions or the PRO Agreement. The Planning Commission may also defer the question to the City Council.
- G. **Recordation of PRO Agreement.** A rezoning with PRO shall become effective following publication in the manner provided by law and City Charter, and, after recordation of the PRO Agreement, whichever is later.
- H. **Fee.** The applicant for a rezoning with PRO shall pay as a fee the City's costs and expenses incurred by the City in the review of and preparation of documents for a rezoning with PRO. An escrow shall be established in an amount specified by City Council Resolution, and additional reasonable amounts shall be contributed as required in order to complete the process of review and approval. Any unexpended amounts from such escrow shall be returned to the applicant.
- I. **Expiration; extension.** Unless otherwise agreed to by City and the applicant as documented in the PRO Agreement, the rezoning with PRO shall expire following a period of two (2) years from the effective date of the PRO 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-year period and proceeds diligently and in good faith as required by the ordinance to completion, subject to the following.
 - i. In the event *bona fide* development has not commenced within two (2) years from the effective date of the rezoning, the rezoning and PRO shall

be void and of no effect, unless otherwise provided in the PRO Agreement, which may provide that the terms and conditions of the PRO shall not expire and shall run with the land and be in the nature of a deed restriction. No approved PRO Plan shall expire after development commences, except with the approval of the Council and of all parties in interest in the land.

- ii. If development and/or actions are undertaken on or with respect to the property in violation of the PRO Agreement, such development and/or actions shall constitute a nuisance *per se*. In such case, the City may issue a stop work order relative to the property and seek any other lawful remedies. Until curative action is taken to bring the property into compliance with the PRO Agreement, the City may withhold, or, following notice and an opportunity to be heard, revoke permits and certificates, in addition to or in lieu of such other lawful action to achieve compliance.
- iii. For good cause, the City Council may grant an extension of the rezoning with PRO 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:
 - a. The applicant has demonstrated that required utility services have been delayed;
 - b. 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;
 - c. The applicant has demonstrated that unforeseen economic events or conditions have caused delays;
 - d. The approved PRO Plan to be extended is in compliance with all current site plan criteria and current ordinances, laws, codes, and regulations;
 - e. There is no pending zoning ordinance amendment that would otherwise substantially change the requirements of final site plan approval for the approved PRO Plan.
- iv. If the rezoning with PRO becomes void in the manner provided herein:
 - a. The City will initiate a new rezoning of the property to a reasonable district classification in accordance with the procedure provided by law for rezonings in cities. Until such time as a new zoning district classification of the property has become effective, no development shall be undertaken or permits for development issued.
 - b. The property owner may also seek a new rezoning of the property.

J. **Effective date.** The effective date of this ordinance amendment is _____, 2021. PROs that have been approved by City Council prior to that effective date

are not to be considered non-conforming. The PRO Plans and PRO Agreements shall be and remain valid and effective. Any amendments to such PRO Plans and PRO Agreements, however, shall be subject to the requirements of this amended ordinance. The expiration and extension provisions shall apply to such PRO Plans.

PART III. 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 IV. 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 V. 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 VI. 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 _____, 2021.

ROBERT J. GATT, MAYOR

CORTNEY HANSON, CITY CLERK

Ayes:
Nays:
Abstentions:
Absent: