

ORDINANCE #1211

AN ORDINANCE OF THE CITY OF LANSING, MICHIGAN, TO AMEND TITLE 6 OF THE PLANNING AND ZONING CODE, PART 12 OF THE CODIFIED ORDINANCES OF THE CITY OF LANSING, CHAPTER 1240, SECTION 1240.03 FOR THE PURPOSE OF DEFINING A "GARDEN", "GARDEN STRUCTURE", "GARDENING" AND TO AMEND THE DEFINITION OF "OPEN SPACE".

THE CITY OF LANSING ORDAINS:

Section 1. That Title 6 of the Planning and Zoning Code, Part 12 of the Codified Ordinances of the City of Lansing, Michigan, be and are hereby amended as follows:

CHAPTER 1240. - GENERAL PROVISIONS AND DEFINITIONS

1240.03. - Definitions.

As used in this Zoning Code, unless otherwise provided:

Abutting. "Abutting" means having a lot line which, at not less than one point, touches another property line.

Accessory structure. "Accessory structure" means a structure which is used exclusively for an accessory use.

Accessory use. "Accessory use" means a use which meets all of the following criteria:

- A. It is clearly incidental to the principal use.
- B. It is customarily found in connection with the principal use.
- C. It is subordinate to the principal use.
- D. It is located on the same lot as the principal use, except as otherwise permitted in this Zoning Code.

Adjacent. "Adjacent" means the status of being contiguous to or abutting. In the case of two lots, "adjacent" means both of the following:

- A. The first lot is directly across a public right-of-way from the second lot.
- B. Such public right-of-way is less than 100 feet in width.

Alley. "Alley" means any dedicated public right-of-way affording a secondary means of access to abutting property and not intended for general traffic circulation.

Ambulatory health care facility. See "Clinic."

Animal hospital. "Animal hospital" means a structure or lot where animals are given medical or surgical care or treatment.

Applicant. "Applicant" means a person having a legal, equitable or leasehold interest in a lot, or a representative of such person, who is making a request pursuant to this Zoning Code.

Architectural features. "Architectural features" means cornices, eaves, gutters, belt courses, sills, lintels, bay windows, chimneys and decorative ornaments.

Arterial, minor. "Minor arterial" means a minor arterial as defined in the Comprehensive Plan, as amended.

Arterial, principal. "Principal arterial" means a principal arterial as defined in the Comprehensive Plan, as amended.

Auditorium. "Auditorium" means a structure intended to present any entertainment, including, but not limited to, a play, musical entertainment or lecture.

Auditorium, school. "School auditorium" means an enclosure within a school intended to present any entertainment, including, but not limited to, a play, theater, musical entertainment or lecture.

Automobile service station. See "Motor vehicle service station."

Basement or cellar. "Basement" or "cellar" means that portion of a structure between floor and ceiling which is partly below and partly above grade. A basement is so located that the vertical distance from grade to the floor below is less than the vertical distance from grade to ceiling. A cellar is that portion of a structure between floor and ceiling which is wholly or partly below grade and so located that the vertical distance from grade to the floor below is equal to or greater than the vertical distance from grade to ceiling.

Bedroom. "Bedroom" means a room within a dwelling unit which meets the following criteria:

- A. It is intended to be used, or is used, for sleeping purposes.
- B. It contains a floor area of not less than 70 square feet.
- C. It is not the only room in the dwelling unit (i.e. an efficiency dwelling unit).

Space and occupancy standards for a bedroom shall be as mandated by the Housing Code of the City, being Chapter 1460 of these Codified Ordinances.

Beneficial user. "Beneficial user" means a person actually using a lot or structure with the permission of the person having a legal, equitable or leasehold interest in the lot.

Berm. "Berm" means an earthen mound designed to separate one area from another.

Block face. "Block face" means the cumulative property on one side of a street exhibiting one of the following characteristics:

- A. The property lying between two intersecting streets or public rights-of-way;
- B. The property lying between an intersecting street and railroad right-of-way, river or stream; or
- C. The property lying between a public right-of-way, railroad right-of-way, river or stream and the corporate boundaries of the City.

Boarding or lodging house. "Boarding or lodging house" means a structure, other than a hotel, where, for compensation, and by prearrangement for definite periods, lodging or meals, or both, are provided for at least three but not more than 20 persons.

Buffer. "Buffer" means a land area that separates one land use from another. Such area may be landscaped and may also contain a berm, fence or other screening material.

Building. "Building" means an independent structure having a roof supported by columns or walls, intended and/or used for shelter or enclosure of persons or chattels. When any portion of a structure is completely separated from every other part by division walls from the ground up, and without openings, each portion of such structure shall be deemed a separate structure. This refers to both temporary and permanent structures, and includes tents, sheds, garages, stables, greenhouses or other accessory structures. A building does not include such structures with interior areas not normally

accessible for human use, such as gas holders, tanks, smoke stacks, grain elevators, coal bunkers, oil cracking towers or similar structures.

Building Code. "Building Code" means Titles Two and Four of Part Fourteen - the Building and Housing Code - of these Codified Ordinances.

Building height. "Building height" means the vertical distance from the grade at the front of a structure to the highest point of the coping of a flat roof; the average height between the eaves and a ridge or to the decline of a mansard roof; or the average height between the plate and ridge of a gable, hip or gambrel roof.

Business. "Business" means an office, commercial or industrial use entered into for the purpose of financial gain, earning a livelihood or improving a person's economic conditions and desires.

Canopy. "Canopy" means an ornamental or roof-like structure which is fastened to a structure and used for protection.

Carport. "Carport" means an accessory structure used primarily to shelter private motor vehicles. A carport is attached to the principal structure and is completely open on not less than two sides.

CAS number. "CAS number" or "chemical abstract service number" means a unique number for every chemical established by a Columbus, Ohio organization which indexes information published in "chemical abstracts" by the American Chemical Society. It is used (among other purposes) in maintaining chemical inventories used by DEQ for regulatory purposes, by firefighters for firefighter right to know purposes and by public service departments responsible for discharges into stormwater or municipal sewer systems.

Child care facility. "Child care facility" means a facility receiving more than 12 preschool or school-aged children and providing care where parents or guardians are not immediately available to the children for:

- A. Periods of less than 24 hours a day; or
- B. Not less than two consecutive weeks, regardless of the number of hours of care per day.

The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group or drop-in center. "Child care facility" does not include preschool or school-age children in classes at a church for a temporary period of time of not more than three hours per day for an indefinite number of days, or over three hours but not more than eight hours per day for a number of days not to exceed four weeks, during a calendar year or in a facility operated by a religious organization where they are cared for, for not more than three hours while persons responsible for them are attending religious services.

Church. "Church" means a structure used to conduct a religious service, including, but not limited to, the usual accessory structures and uses, such as convents, rectories, parsonages, monasteries, gymnasiums and church halls.

Clinic. "Clinic" means a structure where medical or dental care is furnished to persons on an out-patient basis by more than three doctors or dentists.

Common way. "Common way" means a commonly shared or used pedestrian or vehicular way that connects or serves two or more properties.

Comparison retail store. "Comparison retail store" means a retail store which is not a convenience retail store.

Comprehensive Plan. "Comprehensive Plan" means a master plan described by Section 6 of Public Act 285 of 1931, as amended, being M.C.L.A. 125.36.

Conformed copy. "Conformed copy" means an exact duplicate of an original.

Construction. "Construction" means the putting together of materials to build a new structure or to restore, reconstruct, extend, enlarge or repair an existing structure. This definition does not apply to Chapter 1288.

Construction, start of. "Start of construction" means the first placement of permanent construction of a structure, other than a mobile home, on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. "Permanent construction" does not include land preparation, such as clearing, grading and filling; the installation of streets and/or walkways; excavation for a basement, cellar, footings, piers or foundations or for the erection of temporary forms; or the installation on the property of accessory structures, such as garages or sheds, not occupied as dwelling units or part of the main structure.

For a structure, other than a mobile home, without a basement, cellar or poured footings, "start of construction" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation.

For premanufactured homes, "start of construction" means the affixing of the premanufactured home to its permanent site. For mobile homes within mobile home parks or mobile home subdivisions, "start of construction" is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed, including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads and the installation of utilities is completed.

Contiguous. "Contiguous" means abutting.

Convalescent care home. "Convalescent care home" means a nursing care facility, other than a hospital, that provides organized nursing care and medical treatment to seven or more unrelated individuals suffering or recovering from illness, injury or infirmity. County medical facilities shall be deemed convalescent care homes for the purpose of this Zoning Code.

Convenience retail store. "Convenience retail store" means an establishment which primarily serves the surrounding neighborhood and includes, but is not limited to, the following:

- A. Limited service food store;
- B. Drug store;
- C. Hardware store;
- D. Barber and/or beauty shops;
- E. Laundry or cleaners pickup;
- F. Watch and shoe repair;
- G. Jewelry store;
- H. Florist;
- I. Gift shop;
- J. Book store;
- K. Clothing store;
- L. Photographer;
- M. Tailor; and
- N. Bakery whose products are sold only on the premises.

Core area. "Core area" means that portion of a structure with one or more rooms directly accessible to one another, including a bathroom and complete kitchen facilities, which rooms are arranged, designed or used as living quarters for one family. A core area shall be measured from the interior faces of the exterior walls.

Cumulative. "Cumulative" means increasing or enlarging by successive addition through all points in time.

Damaged. "Damaged" means an item that still functions as it was intended, but is missing parts or has parts that have suffered some degree of destruction.

Days. "Days" means calendar days, unless otherwise stated.

Density, gross. "Gross density" means a figure which equals the total number of dwelling units on a lot divided by the total number of acres included in the lot.

Density, net. "Net density" means a figure which equals the total number of dwelling units on a lot divided by the total number of acres included in the lot, excluding any lot area owned by a governmental entity, used as a private street or occupied by a nonresidential use.

Deteriorated. "Deteriorated" means an item which still functions as it was intended, but is missing parts or requires substantial maintenance.

Dimensional provision. "Dimensional provision" means one or more of the following:

- A. Lot area requirements;
- B. Front yard requirements;
- C. Side yard requirements;
- D. Rear yard requirements;
- E. Parking requirements; or
- F. Height restrictions.

District zoning. "District zoning" means an area within which certain uses of land and structures are permitted and certain others are prohibited, yards and other open spaces are required and lot areas, structure height limits and other requirements are established, all of the foregoing being identical for the zone in which they apply.

Duplex. See "Dwelling, two-family."

Dwelling, multiple. "Multiple dwelling" means a structure or portion of a structure which contains three or more dwelling units.

Dwelling, one-family. "One-family dwelling" means a structure designed and/or used exclusively for residential purposes for one family only and containing one dwelling unit.

Dwelling, two-family. "Two-family dwelling" means an attached or semidetached structure used for residential occupancy by two families living independently of each other. Such dwelling is also known as a "duplex dwelling."

Dwelling unit. "Dwelling unit" means a structure or a portion of a structure on a permanent foundation with one or more rooms, including a bathroom and complete kitchen facilities, which rooms are arranged, designed or used as living quarters for one family. "Dwelling unit" includes a structure constructed on-site, a mobile home not located in a mobile home park, a premanufactured unit, a precut structure or a panelized structure, whether erected above and/or below ground, which complies with the following standards:

- A. It shall conform with the minimum residential lot dimensional requirements for the district in which it is located.

- B. On lots 40 feet or greater in width, it shall contain a core area of living space of at least 24 feet by 24 feet in size and shall have a minimum internal height of seven and one-half feet. For single-family dwellings on lots less than 40 feet in width in A, A-1, B and C Residential Districts, it shall contain a core area of living space of at least 20 feet by 20 feet in size and shall have a minimum internal height of seven and one-half feet.
- C. It is firmly attached to a permanent foundation constructed on the site in accordance with the Building Code of the City and has a wall of the same perimeter dimensions as the structure which is constructed of such materials and type as required in the Building Code. If the structure is a mobile home not located in a mobile home park, it shall be installed pursuant to the manufacturer's set-up instructions, shall be secured to the premises by an anchoring system or device complying with all State and Federal rules and regulations governing the same and shall have a perimeter wall as required in this paragraph which is aesthetically compatible in design and appearance with conventionally on-site constructed homes.
- D. If it is not a structure constructed on site, it shall be aesthetically compatible in design and appearance with conventionally on-site constructed homes. For purposes of compatibility, all structures shall:
 1. Have not less than two exterior doors with one door being in front of the structure and the other being in either the rear or on the side of the structure;
 2. Have permanently attached steps connected to exterior door areas or porches connected to exterior door areas where required by a difference in elevation;
 3. Have siding firmly affixed to the exterior walls of the structure constructed of conventional materials such as wood, vinyl, aluminum or brick;
 4. Have a shingled roof constructed of conventional material, which roof is permanently attached to the structure and has a minimum 3:12 pitch and an overhang of at least one foot; and
 5. Not have wheels, towing mechanisms, undercarriages or chassis that are visible from the outside of the structure.

This paragraph shall not be construed to prohibit innovative design concepts involving such matters as solar energy, view, unique land contour or architectural design.

Dwelling unit, efficiency. "Efficiency dwelling unit" means a dwelling unit of not more than one room in addition to a kitchen and bathroom.

Educational facility. "Educational facility" means a public or private institution or a separate school or department of a school, and includes an academy, college, elementary or secondary school, extension course, kindergarten, local school system, university or a business, nursing, professional, secretarial, technical or vocational school, and includes an agent of an educational institution.

Emergency services facility. "Emergency services facility" includes, but is not limited to, public or private civil defense, ambulance or fire service.

Excavation. "Excavation" means any breaking of ground, except for agricultural purposes, ground care and landscaping.

Extension. "Extension" means an addition to the floor area of an existing structure, an increase in the intensity of a use, an enlargement of land area utilized by a specific use or an increase in the activity of a use.

Fair market value. "Fair market value" means an estimate of the actual worth of a lot, structure or combination thereof, which estimate is made by a licensed real estate broker experienced and qualified in the appraisal of real estate using appropriate appraisal techniques.

Family. "Family" means any one of the following (see also "family, functional" hereof):

- A. An individual;
- B. An individual or two or more persons related by blood, marriage or adoption, together with not more than two other persons as roomers; or
- C. Two or more persons related by blood, marriage or adoption, with not more than two other unrelated persons as roomers.

Family day care home. "Family day care home" means a facility receiving six or less preschool or school-aged children for care for less than 24 hours a day, where the parents or guardians are not immediately available to the children. "Family day care home" includes a facility receiving six or less preschool or school-aged children and which provides care for not less than two consecutive weeks, regardless of the number of hours of care per day.

Family, functional. "Functional family" means a group of persons, which group does not meet the definition of "family" in paragraph (56) hereof, living in a dwelling unit as a single housekeeping unit and intending to live together as a group for the indefinite future. "Functional family" does not include a fraternity, sorority, club, hotel or other group of persons whose association is temporary or commercial in nature.

Fence. "Fence" means a fence as defined by Section 1290.01(e).

Filling. "Filling" means the permanent depositing or dumping of any matter onto or into the ground, except for agricultural purposes, ground care or landscaping.

Floor area. "Floor area" means the sum of the horizontal areas of each story of a structure measured from the exterior faces of the exterior walls.

Floor area, usable. "Usable floor area" means, for the purpose of computing parking, that area used for or intended to be used for the sale of merchandise or services, or for use to serve patrons, clients or customers. Such floor area which is used or intended to be used for hallways, stairways, elevator shafts, utility or sanitary facilities or the storage or processing of merchandise shall be excluded from this computation of "usable floor area." Measurement of usable floor area shall be the sum of the horizontal areas of each story of a structure measured from the interior faces of the exterior walls. Usable floor area is illustrated in Appendix I following the text of this Zoning Code.

Funeral home. "Funeral home" means a structure used and occupied by a professional licensed mortician for burial preparation and funeral services.

Garage. "Garage" means an accessory structure for the storage of motor vehicles.

Garage, private. "Private garage" means an accessory structure which is used primarily for the parking of private motor vehicles operated as accessory uses. A private garage has access through an overhead door and has a hard-surfaced driveway leading to the structure from a property line.

Garage, public. "Public garage" means any garage other than a private garage.

GARDEN MEANS A SPACE USED FOR GROWING OF PLANTS FOR HUMAN CONSUMPTION, INCLUDING BERRIES, HERBS, VEGETABLES, SEEDS, OR OTHER SIMILAR PRODUCTS INCORPORATED INTO, AND USED AS FOOD AND FLOWERS, BUT NOT INCLUDING PLANTS GROWN FOR COMMERCIAL SALE OR PURPOSES. GARDENS THAT ARE ACCESSORY TO A PRIMARY PERMITTED USE ARE ALLOWED BY RIGHT IN ALL RESIDENTIAL DISTRICTS. GARDENS THAT ARE THE PRIMARY USE OF A LOT ARE PERMITTED IN ALL RESIDENTIAL DISTRICTS, SUBJECT TO COMPLIANCE WITH ALL APPLICABLE STANDARDS OF THE LANSING ZONING ORDINANCES AND SIGN ORDINANCE, INCLUDING, BUT NOT LIMITED TO SETBACK, BUILDING HEIGHT, PLACEMENT AND LOT COVERAGE, LANDSCAPE, SCREENING AND BUFFERING AND SIGN RESTRICTIONS; AND ALSO SUBJECT TO ALL OTHER APPLICABLE STATE LAWS AND CITY ORDINANCES, INCLUDING, BUT NOT LIMITED TO NOISE AND OTHER NUISANCES AS DEFINED BY CITY ORDINANCE, EXCEPT THAT VEGETATION AS DESCRIBED IN A DEFINED GARDEN MAY EXCEED 8" IN HEIGHT. NOTHING HEREIN SHALL BE CONSTRUED TO PERMIT ACTIVITIES OR STRUCTURES PROHIBITED BY THE MICHIGAN MEDICAL MARIHUANA ACT, MCL 333.26421 ET SEQ. OR THE MICHIGAN MEDICAL MARIHUANA FACILITIES LICENSING ACT, MCL 333. 27101 ET SEQ.

GARDEN STRUCTURE MEANS A STRUCTURE USED FOR THE PURPOSE OF ENCLOSING A GARDEN, INCLUDING THE INCIDENTAL USE AND STORAGE OF GARDENING IMPLEMENTS, MACHINERY, EQUIPMENT AND APPURTENANCES USED IN THE ONSITE GARDENING ACTIVITIES. GARDEN STRUCTURES ARE PERMITTED IN ALL RESIDENTIAL DISTRICTS, SUBJECT TO COMPLIANCE WITH SETBACK, LOT COVERAGE, BUILDING HEIGHT AND ALL OTHER APPLICABLE REQUIREMENTS OF THE ZONING ORDINANCE AND BUILDING CODES. NOTHING HEREIN SHALL BE CONSTRUED TO PERMIT ACTIVITIES OR STRUCTURES PROHIBITED BY THE MICHIGAN MEDICAL MARIHUANA ACT, MCL 333.26421 ET SEQ. OR THE MICHIGAN MEDICAL MARIHUANA FACILITIES LICENSING ACT, MCL 333. 27101 ET SEQ.

GARDENING MEANS THE GROWING OF A GARDEN OR THE ACT OF WORKING IN A GARDEN.

Golf course. "Golf course" means a comparatively large, unobstructed acreage involving enough room over which to walk or ride, point to point, over a generally prescribed course, and to strive to send a ball long distances with variable accuracy, all without unreasonably endangering other players or intruding upon them.

Governmental entity. "Governmental entity" means the Federal Government, this State or any of its instrumentalities; a County, City, Township, Village, school district, community college district or community hospital district; any agency authorized to exercise a governmental function in a limited geographical area or other political subdivision; any instrumentality of one or more of such units; or any of such units and one or more other States or political subdivision of such States.

Grade. "Grade" means the lowest point of elevation within the area between the exterior surface of the structure and the property line. If the property line is more than five feet from the exterior surface of the structure, "grade" means the lowest point of

elevation between the exterior surface of the structure and a line five feet from the exterior surface of the structure.

Greenhouse, commercial. "Commercial greenhouse" means a glass or less than opaque enclosure which exceeds 150 square feet in floor area and is designed or used for the cultivation or protection of plants; or a glassed enclosure, regardless of size, designed or used for the cultivation or protection of plants for commercial purposes.

Group day care home. "Group day care home" means a private home receiving more than six and not more than 12 preschool or school age children for care for:

- A. Periods less than 24 hours a day where parents or guardians are not immediately available to the children; or
- B. Not less than two consecutive weeks, regardless of the number of hours of care per day.

Haul road. "Haul road" means a private road utilized by trucks, tractors or other similar vehicles to haul materials to and/or from a construction site, borrow pit or landfill.

Health maintenance organization (HMO). "Health maintenance organization" means a health facility or agency that:

- A. Delivers health maintenance services to enrollees, under the terms of a health maintenance contract, directly or through arrangements with affiliated providers; and
- B. Is responsible for the availability, accessibility and quality of the health maintenance services provided.

Home occupation. "Home occupation" means a business conducted in a dwelling unit by a person of legal or equitable interest in the dwelling unit.

Hospital. "Hospital" means a health facility offering in-patient, overnight care and services for observation, diagnosis and active treatment of human patients with a medical, surgical, obstetric, chronic or rehabilitative condition requiring the daily direction or supervision of a physician.

Hotel. "Hotel" means a structure or part of a structure with a common entrance or entrances, in which dwelling units are used primarily for transient occupancy and in which one or more of the following services are offered:

- A. Maid service;
- B. Telephone, secretarial or desk service;
- C. Furnishing of linen; and
- D. Bellboy service.

A hotel may include a restaurant or cocktail lounge, public banquet hall, ballroom or meeting room and may further include a guest room and suite of rooms for extended occupancy.

Intensity of use. "Intensity of use" means the amount of activity associated with a specific use. Intensity of use shall be determined by the Department of Planning and Municipal Development based on the following criteria:

- A. Amount of vehicular traffic generated;
- B. Amount of pedestrian traffic generated;
- C. Noise, odor and air pollution generated;
- D. Potential for litter or debris;
- E. Type and storage of materials connected with the use;
- F. Total residential units and density if residential; and

G. Total structure coverage and structure height on the parcel.

Junk. "Junk" means any of the following products which are stored in the open and which are damaged or deteriorated or are in such a condition that the product cannot be used for the purpose for which it was manufactured:

- A. Motor vehicles;
- B. Machinery;
- C. Appliances;
- D. Merchandise with missing parts;
- E. Scrap metal; and
- F. Scrap materials, including, but not limited to, rags, paper or building materials.

Junkyard. "Junkyard" means a lot used to store or process junk.

Kennel. "Kennel" means the keeping on a lot for commercial purposes of four or more dogs, cats or other household pets which are more than six months old. Keeping includes, but is not limited to, boarding, breeding or training.

Loading space or area. "Loading space or area" means an off-street space on the same lot with a structure or group of structures for the temporary parking of a commercial vehicle while loading and unloading merchandise or materials, and having direct and unobstructed access to a public street or alley. "Unobstructed" does not preclude the use of security devices.

Lot. "Lot" means a parcel of land consisting of one or more lots of record occupied or intended to be occupied by a principal structure or use and any accessory structure or by any other use or activity permitted on the parcel of land. "Lot" includes the open spaces and yards required under this Zoning Code and has its frontage on a public street or road either dedicated to the public or designated on a recorded subdivision plat. Corner, interior and through lots are illustrated in Appendix II following the text of this Zoning Code and are described as follows:

- A. "Corner lot" means a lot where the interior angle of two adjacent sides at the intersection of two streets is less than 135 degrees. A lot abutting upon a curved street is a corner lot if the radius of the arc is less than 150 feet and the tangents to the curve at the two points where the lot lines meet the curve or the straight street line extended form an interior angle of less than 135 degrees.
- B. "Interior lot" means a lot other than a corner lot.
- C. "Through lot" means an interior lot having frontage on two more or less parallel streets.

Lot area. "Lot area" means the total horizontal area within the lot lines of the lot.

Lot coverage. "Lot coverage" means the part or percentage of lot area occupied by structures and hard-surfaced parking areas.

Lot depth. "Lot depth" means the horizontal distance between front and rear lot lines, measured along the median between the side lot lines.

Lot line, front. "Front lot line" means that line separating a lot from the right-of-way line of a street.

Lot line, rear. "Rear lot line" means a lot line which is opposite the front lot line. In the case of a corner lot, the rear lot line may be opposite either front lot line, but there shall be only one rear lot line. In the case of a lot converging toward the rear, the rear lot line shall be an imaginary line parallel to the front lot line, not less than ten feet long and wholly within the lot.

Lot line, side. "Side lot line" means any lot line not a front lot line or a rear lot line.

Lot lines. "Lot lines" means the lines bounding a lot.

Lot of record. "Lot of record" means a parcel of land which is part of a subdivision, the dimension and configuration of which has been recorded on a map in the office of the Register of Deeds for the appropriate county, or a parcel described by metes and bounds in any instrument of conveyance recorded at the County Register of Deeds.

Lot width. "Lot width" means the horizontal distance from one side lot line to the opposite lot line.

Maintenance of structure. "Maintenance of structure" means to keep up, to keep from change, to preserve, to hold or keep in any particular state or condition or to support what has already been brought into existence.

Mobile home. "Mobile home" means a structure, transportable in one or more sections, which is built on a chassis and designed to be used as a dwelling without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained in the structure. "Mobile home" includes a manufactured home, but does not include a trailer.

Mobile home park. "Mobile home park" means a parcel or tract of land under the control of a person upon which three or more mobile homes are located on a continual nonrecreational basis and which is offered to the public for that purpose, regardless of whether a charge is made therefor, together with any structure, building, enclosure, street, equipment or facility used or intended for use incidental to the occupancy of a mobile home, and which is not intended for use as a temporary trailer park.

Motel. "Motel" means a series of attached, semidetached or detached rental units containing a bedroom and a bathroom. A motel shall provide for overnight lodging which is offered to the public for compensation and shall cater primarily to the public traveling by motor vehicle.

Motor vehicle repair station. "Motor vehicle repair station" means any lot on which minor repairs, described in paragraph (96) hereof, are performed and, in addition, any of the following are performed: bumping, painting, replacement of body parts, engine repair other than normal tuneup repair, engine replacement, replacement of transmission or internal transmission parts or repair remaking.

Motor vehicle service station. "Motor vehicle service station" means any lot used for supplying gasoline, oil and minor accessories at retail directly to the customer and which performs minor repairs. "Minor repairs" means: engine tune up, alternator or generator replacement, rustproofing, battery replacement, fan belt replacement, radiator hose replacement, radiator repair or replacement, tire repair or replacement, wheel balancing, muffler and exhaust system replacement or front end alignment.

Nonconformity. "Nonconformity" means a use, structure or lot which does not conform with a use or dimensional provision or any combination of a use or dimensional provision of this Zoning Code, but which use, structure or land was lawfully established prior to the effectiveness date of such use or dimensional provision.

Nonresidential use. "Nonresidential use" means any use not a residential use.

Nursery. "Nursery" means any land used to raise trees, shrubs, flowers and other plants for sale or for transplanting.

Nursing home. See "Convalescent care home."

Occupant. "Occupant" means a person who takes or enters upon possession of a lot.

Off-street parking facility. "Off-street parking facility" means an off-street parking surface lot or an off-street parking structure.

Off-street parking structure. "Off-street parking structure" means a structure which provides for vehicular parking spaces, along with drives and aisles for maneuvering, so as to provide access for entrance and exit for the parking of two or more vehicles.

Off-street parking surface lot. "Off-street parking surface lot" means the use of an area for vehicular parking spaces, along with drives and aisles for maneuvering, so as to provide access for entrance and exit for the parking of more than two vehicles on the surface of a lot.

Office. "Office" means a structure in which a person transacts his or her business or carries on his or her stated occupation.

Open space. "Open space" means that ground area, and the space above such ground area, which is unimpeded from the ground to the sky by any structure, except that the area may be used for landscaping, GARDENING or recreational purposes such as swimming, shuffleboard, tennis or similar uses. Parking lots and storage areas for vehicles and material shall not be considered as open space.

Open storage. "Open storage" means any of the following items which are stored in the open and which are inoperable, damaged and/or deteriorated in such a condition that any such item cannot be used for the purpose for which it was manufactured, or is not reasonably associated with the principal use of the lot itself, including, but not limited to:

- A. Motor vehicles;
- B. Machinery;
- C. Appliances;
- D. Motor vehicle parts; and
- E. Other materials, including, but not limited to, metal, pipes, rags, papers or building materials.

Outdoor play space. "Outdoor play space" means that outside area on a lot reserved at a day care or group day care home for outside exercise, large motor skill development and play space of children.

Panelized structure. "Panelized structure" means a structure consisting of preconstructed two-dimensional units for walls, roofs and floors, which may include structural framing, windows, doors, exterior finishes, interior wall finishes, installed wiring, plumbing and insulation, which is brought on-site and erected thereon on a permanent foundation.

Parking space. "Parking space" means an area of defined length and width for the parking of motor vehicles. Such area shall be exclusive of drives, aisles or entrances giving access thereto.

Peak hour parking demand. "Peak hour parking demand" means the number of parking spaces required during the highest intensity of use.

Perimeter line or boundary line. "Perimeter line" or "boundary line" means the exterior limits of a lot.

Person. "Person" means an individual, agent, association, corporation, partnership, sole proprietorship, joint apprenticeship committee, joint stock company, labor

organization, legal representative, mutual company, receiver, trust, trustee in bankruptcy, unincorporated organization, personal representative of an estate, the State, a political subdivision of the State, an agency of the State or any other legal or commercial entity.

Planned development. "Planned development" means an office, commercial or industrial complex developed as a single entity by one person, which complex contains more than one structure on a lot, not including accessory structures.

Planned neighborhood convenience retail center. "Planned neighborhood convenience retail center" means a building or group of buildings on a single lot two acres or more in size and designed to provide commercial services to a residential neighborhood. "Residential neighborhood" means the land area (within a one-half mile radius of the proposed planned neighborhood convenience retail center) which is developed with at least 70 percent residential uses.

Planned residential development. "Planned residential development" means a lot on which all the following conditions apply:

- A. If the lot is zoned DM-1, the lot is more than six acres in size; if the lot is zoned DM-2, the lot is more than four acres in size; if the lot is zoned DM-3, the lot is more than three acres in size; and if the lot is zoned DM-4, the lot is more than two acres in size.
- B. The lot has more than one structure on it which is used for residential purposes.
- C. The lot is planned and developed as an integral unit in a single development operation according to the requirements of Chapter 1280.

Plot plan. "Plot plan" means a diagram depicting the existing and proposed structures, lot lines, setbacks, parking areas and the location of any known wells.

Porch, enclosed. "Enclosed porch" means a covered entrance to a structure which is surrounded on all sides by glass, screen, wood, brick, plastic or other materials permitted by the Building Code.

Porch, open. "Open porch" means a porch that is not enclosed.

Premanufactured unit. "Premanufactured unit" means an assembly of materials or products intended to comprise all or part of a building or structure, and that is assembled at other than the final location of the unit of the building or structure by a repetitive process under circumstances intended to ensure uniformity of quality and material content.

Principal use. "Principal use" means the primary, major, main, leading, outstanding or chief use which a lot serves or is intended to serve.

Probate. "Probate" means the period of probate, as defined in Public Act 642 of 1978, as amended, being M.C.L.A. 700.1 et seq.

Public utility. "Public utility" means electric light and power companies, whether private, public, corporate or cooperative; gas companies; water, telephone, telegraph, oil, gas and pipeline companies; motor carriers; and all public transportation and communication agencies other than railroads and railroad companies.

Reconstruction. "Reconstruction" means the act of rebuilding a structure to meet the standards of the Building Code or Housing Code.

Recreational facility. "Recreational facility" means a structure or open space which provides activities, including, but not limited to, swimming, racquet sports, exercise and fitness rooms or areas and gymnasiums.

Repair. "Repair" means to restore to a sound or good state after decay, injury, dilapidation or partial destruction.

Residential care facility. "Residential care facility" means a governmental or nongovernmental establishment having as its principal function foster care for more than six persons. "Foster care" means the provision of supervision, personal care and protection, in addition to room and board, for 24 hours a day, five or more days a week and for two or more consecutive weeks, with or without compensation. "Residential care facility" includes, but is not limited to, facilities for persons who are homeless, parolees, ex-offenders, aged, emotionally disturbed, developmentally disabled or physically handicapped who require supervision on an on-going basis but do not require continuous nursing care. A residential care facility does not include any of the following:

- A. A nursing home licensed under Article 17 of Public Act 368 of 1978, as amended, being M.C.L.A. 333.20101 to 333.22181;
- B. A hospital licensed under Article 17 of Public Act 368; or
- C. A hospital for the mentally ill or a facility for the developmentally disabled operated by the Department of Mental Health under Public Act 258 of 1974, as amended, being M.C.L.A. 330.1001 to 330.2106.

Residential use. "Residential use" means a use of a lot as a single-family, two-family or multifamily residence, boarding or lodging house or residential care facility, and accessory uses thereto.

Restoration. "Restoration" means to put back into original or historic condition.

Resumption. "Resumption" means to begin the use of a nonconformity after it has been previously discontinued from use.

Salvage yard. "Salvage yard" means a lot where any product, including, but not limited to, any of the following, is taken apart in such a way that the usable parts are separated from the nonusable:

- A. Motor vehicles;
- B. Machinery;
- C. Appliances;
- D. Fixtures;
- E. Goods; and
- F. Merchandise.

Site plan. "Site plan" means a plan that conforms to the requirements contained in Section 1242.05.

Stable. "Stable" means a structure used to keep horses for commercial purposes.

Storage. "Storage" means the holding or safekeeping of goods to await the happening of some future event or contingency which will call for the removal of the goods.

Storage yard. "Storage yard," in an A Residential District to a G-1 Business District, means a lot used for the holding of any type of product, which product is not reasonably associated with the principal use itself. "Storage yard," in a G-2 Wholesale District, H Light Industrial District or I Heavy Industrial District, means a lot used for the holding, in the open, of any type of product, subject to the following conditions:

- A. The product is not junk, unless the junk is associated with the normal functioning of the principal use.
- B. The lot is not used as a salvage yard.

C. The product is not normally used in the functioning of the principal use.

Street. "Street" means a public thoroughfare, avenue, road, highway, boulevard, parkway, way, drive, lane or court which affords the principal means of access to abutting property.

Street, local. "Local street" means a local street as defined in the Comprehensive Plan, as amended.

Street, private. "Private street" means a street which is not public.

Structural alteration. "Structural alteration" means any change in the supporting members of a building, such as bearing walls, columns, beams or girders, or any substantial changes in the roof and exterior walls.

Structure. "Structure" means that which is built or constructed, an edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner.

Structure, minor. "Minor structure" means a structure having a replacement cost of not more than \$5,000.00.

Structure, temporary. "Temporary structure" means a structure which is located on a lot for less than one year, or, if the structure is connected with a construction activity on a lot, until the construction activity is completed.

Substitution. "Substitution" means to put in place of another.

Temporary use. "Temporary use" means any use that is not permitted as a principal use, accessory use or a conditional use in a zoning district, and which is limited in its duration.

Townhouse. "Townhouse" means a group of dwellings having common party walls with each other and normally having a basement. No dwelling in a townhouse is located above or below another dwelling.

Trailer. "Trailer" means a vehicle standing on wheels or rigid supports which is used for temporary living or sleeping purposes. "Trailer" includes a recreational vehicle.

Trailer camp. "Trailer camp" means a tract of land used or designed for the use of two or more trailers as a temporary residence.

Tree. "Tree" means a usually tall, woody plant characterized by a single trunk with a two-inch diameter measured at the time the development plan is submitted and measured three feet from the base of the tree, and which is on the recommended tree list maintained by the City Forester.

Use. "Use" means:

- A. Any purpose for which a structure or lot may be designed, arranged, intended, maintained or occupied; or
- B. Any activity, occupation, business or operation carried on in a structure or on a lot.

Yard. "Yard" means a space on a lot with a structure, which space is unobstructed and unoccupied from the ground upward, except as occupied or obstructed as permitted in this Zoning Code. Front, rear and side yards are illustrated in Appendix III following the text of this Zoning Code.

- A. "Front yard" means a yard extending across the full width of a lot between the front lot line of the structure containing the principal use and the front lot line.
- B. "Rear yard" means a yard extending the full width of a lot between the rearmost structure containing the principal use and the rear lot line, the depth of which is

the least distance between the rear lot line and the rear of the structure containing the principal use.

- C. "Side yard" means a space within a lot between a side lot line and a structure containing the principal use or an attached accessory structure, whichever is closer to the side lot line. A side yard extends on each side of a lot from the front lot line to the rear lot line of the lot.

Zoning Code. "Zoning Code" means Ordinance 636, passed March 7, 1983, as amended, codified herein as Title Six of Part Twelve - the Planning and Zoning Code.

Zoning variance. "Zoning variance" means a modification of the strict letter of this Zoning Code granted when, by reason of exceptional conditions, the strict application of this Zoning Code results in peculiar, exceptional or practical difficulties or unnecessary hardship to the owner of the lot.

(Ord. No. 735, 11-24-86; Ord. No. 766, 1-91-88; Ord. No. 827, 12-17-90; Ord. No. 1117, § 1, 12-11-06)

1240.04. - Amendments.

- (a) An application to amend, supplement or change the regulations and boundaries of zoning districts may be made by any of the following persons:
- (1) A person having a legal or equitable interest in the property;
 - (2) The authorized representative of a person having a legal or equitable interest in the property; or
 - (3) Council.
- (b) The application described in subsection (a) hereof shall be made on forms provided by the Planning Division and shall be filed with the City Clerk and accompanied by the fees required by Council.
- (c) Within one day after receipt of the application, the City Clerk shall refer the application to the Planning Board. Simultaneously, the City Clerk shall place the application on the agenda for the next Council meeting.
- (d) After the City Clerk refers the application to the Board, the Board shall hold not less than one public hearing before submitting a final report to Council and shall provide notice of the public hearing as described in subsection (e) hereof.
- (e) Not less than 15 days' notice of the time and place of the public hearing described in this subsection shall first be published in an official paper or a paper of general circulation in the City. In addition, not less than 15 days' notice of the time and place of the public hearing shall be given by mail to each public utility company and to each railroad company owning or operating any public utility or railroad within the districts or zones affected, if the public utility company or railroad registers its name and mailing address with the City Clerk for the purpose of receiving the notice. An affidavit of mailing shall be maintained by the Planning Division. In addition, the Planning Division shall provide not less than 15 days' notice of a public hearing on a proposed amendment to a zoning district boundary to the owner of the property in question, as represented on the tax records held in the office of the City Assessor. A hearing shall be granted an interested person at the time and place specified on the notice.
- (f) Conditional rezoning.
- (1) *Intent.* It is recognized that there are certain instances when it would be in the best interests of the City, as well as advantageous to land owners seeking a

change in zoning boundaries, if specific conditions were to be proposed by the land owner as part of a request for a rezoning. It is the intent of this section to provide a process consistent with MCL § 125.3405 by which a land owner seeking a rezoning may voluntarily propose conditions regarding the use and/or development of land as part of the rezoning request.

(2) *Application and offer of conditions.*

- (a) A land owner or a land owner's agent 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 at a later time during the rezoning process.
- (b) 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.
- (c) The land owner's offer of conditions may not purport to authorize uses or developments not permitted in the requested new zoning district.
- (d) Any use or development proposed as part of an offer of conditions that would require a special land use permit under the terms of this ordinance may only be commenced if a special land use permit for such use or development is ultimately granted in accordance with the provisions of this ordinance.
- (e) Any use or development proposed as part of an offer of conditions that would require a variance under the terms of this ordinance may only be commenced if a variance for such use or development is ultimately granted by the zoning board of appeals in accordance with the provisions of this ordinance.
- (f) Any use or development proposed as part of an offer of conditions that would require site plan approval under the terms of this ordinance may only be commenced if site plan approval for such use or development is ultimately granted in accordance with the provisions of this ordinance.
- (g) The offer of conditions may be amended during the process of rezoning consideration provided that any amended or additional conditions are offered 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 Board's public hearing on the original rezoning request, then the rezoning application shall be referred to the Planning Board for a new public hearing with appropriate notice and a new recommendation.

(3) *Planning Board review.* The Planning Board, after public hearing and consideration of the factors for rezoning set forth in this ordinance, may recommend approval, approval with recommended changes or denial of the rezoning; provided, however, that any recommended changes to the offer of conditions are acceptable to and thereafter offered by the land owner.

(4) *City Council review.* after receipt of the Planning Board's recommendation, the City Council shall deliberate upon the requested rezoning and may approve or

deny the conditional rezoning request. The City Council's deliberations shall include, but not be limited to a consideration of the factors for rezoning set forth in this ordinance.

(5) *Approval.*

- (a) If 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 land owner and conforming in form to the provisions of this ordinance. The statement of conditions shall be incorporated by attachment or otherwise as an inseparable part of the ordinance adopted by City Council to accomplish the requested rezoning.
- (b) The statement of conditions shall:
 - (1) Contain a legal description of the land to which it pertains.
 - (2) Contain a statement acknowledging that the statement of conditions runs with the land and is binding upon successor owners of the land.
 - (3) Incorporate by attachment or reference any diagram, plans or other documents submitted or approved by the land 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.
 - (4) Contain the notarized signatures of all of the land 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.
- (c) Upon the rezoning taking effect, the zoning map shall be amended to reflect the new zoning classification along with a designation that 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.
- (d) The City Council shall have authority to require that the statement of conditions be recorded with the register of deeds if it determines that, given the nature of the conditions, the recording of such a document would be of material benefit to the City or to any subsequent owner of the land.
- (e) Upon the rezoning taking effect, the use of the land so rezoned shall conform thereafter to all of the requirements regulating its use and development as contained in the statement of conditions.

(6) *Compliance with conditions.*

- (a) 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 of 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 zoning ordinance and be punishable accordingly. Additionally, any such violation shall be deemed a nuisance per se and subject to judicial abatement as provided by law.
- (b) No permit or approval shall be granted under this ordinance for any use or development that is contrary to a statement of conditions.

- (7) *Time period for establishing development or use.* Unless another time period is specified in the ordinance rezoning the subject land, the approved development and/or use of the land pursuant to building and other required permits must be commenced upon the land within 18 months (or shorter if specified) after the rezoning takes effect and thereafter proceed diligently to completion. This time limitation may, upon written request, be extended by the City Council if: (1) It is demonstrated to the City Council's satisfaction that there is a strong likelihood that the development and/or use will commence within the period of extension and proceed diligently thereafter to completion and (2) the City Council finds that there has not been a change in circumstances that would render the zoning with statement of conditions incompatible with other zones and uses in the surrounding area or otherwise renders it inconsistent with zoning policy.
- (8) *Reversion of zoning.* If approved development and/or use of the rezoned land does not occur within the time frame specified under Subsection (7) above, then the land shall revert to its former zoning classification as set forth in MCL § 125.3405.
- (9) *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 or otherwise, the statement of conditions imposed under the former zoning classification shall cease to be in effect. Upon the land owner's written request, the City Clerk shall record with the register of deeds a notice that the statement of conditions is no longer in effect.
- (10) *Amendment of conditions when extension requested.* If a conditional zoning has been approved and the applicant requests an extension of time for commencement of the development, the City Council may add to, delete or modify the conditions in the previously approved statement of conditions as part of its decision to grant the requested extension so long as the changes are proposed by the developer.
- (11) *City's right to rezone.* Nothing in the statement of conditions nor in the provisions of this section shall be deemed to prohibit the City from rezoning all or any portion of land that is subject to a statement of conditions to another zoning classification. Any rezoning shall be conducted in compliance with City Ordinances and City Charter.
- (12) *Failure to offer conditions.* The City shall not require a land owner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect a land owner's rights under this ordinance.
- (g) After the public hearing described in subsection (d) hereof, the Board shall make its final report to Council. A summary of the comments submitted at the public hearing shall be transmitted with the report of the Board to Council. Council shall hold at least one public hearing and shall provide notice of a public hearing as described in subsection (e) hereof.
- (h) Council shall not determine the boundaries of districts nor impose regulations until after the final report of the Board, nor shall this Zoning Code or the maps be amended after they are adopted in the first instance until the proposed amendment

has been submitted to the Board and it has held at least one hearing and made a report. In either case, Council may adopt the ordinance and maps, with or without amendments, after receipt of the Board's report, or refer this Zoning Code and maps again to the Board for a further report.

- (i) Upon presentation of a protest petition meeting the requirements of this subsection, an amendment to this Zoning Code which is the object of the petition shall be passed only by a two-thirds vote of Council. The protest petition shall be presented to Council before final legislative action on the amendment, and shall be signed by one of the following:
 - (1) The owners of at least 20 percent of the area of land included in the proposed change; or
 - (2) The owners of at least 20 percent of the area of land included within an area extending outward 100 feet from any point on the boundary of the land included in the proposed change.
- (j) For purposes of subsection (h) hereof, publicly owned land shall be excluded in calculating the 20 percent land area requirement.
- (k) Following the adoption of this Zoning Code and following the adoption of subsequent amendments to this Zoning Code by Council, one notice of adoption shall be published by the City Clerk in a newspaper of general circulation in the City within 15 days after adoption. The notice shall include the following information:
 - (1) In the case of a newly adopted zoning ordinance, the following statement: "A zoning ordinance regulating the development and use of land has been adopted by Council;"
 - (2) In the case of an amendment to an existing ordinance, either a summary of the regulatory effect of the amendment, including the geographic area affected, or the text of the amendment;
 - (3) The effective date of the ordinance; and
 - (4) The place and time where a copy of the ordinance may be purchased or inspected.

Section 2. All ordinances, resolutions or rules, parts of ordinances, resolutions or rules inconsistent with the provisions hereof are hereby repealed.

Section 3. Should any section, clause or phrase of this ordinance be declared to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof other than the part so declared to be invalid.

Section 4. This ordinance shall take effect on the 30th day after enactment unless given immediate effect by City Council.