

## Chapter 42 OPEN SPACE AND PARKLAND PRESERVATION\*

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**\*Editor's note:** Ord. No. 17-04, adopted May 3, 2004, added Ch. 42 to read as herein set out. See also the Code Comparative Table.

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### 3:60. Title.

This chapter shall be known as the "Open Space and Parkland Preservation Ordinance" of the City of Ann Arbor.

(Ord. No. 17-04, § 1, 5-3-04)

### 3:61. Purpose and findings

The purpose of this chapter is to preserve and protect open space, natural habitats, parkland and the City's source waters inside and outside the City limits for benefit of residents of the City of Ann Arbor and in cooperation with the greater Ann Arbor community.

The City Council finds:

- (1) The City of Ann Arbor is a desirable place to live, work and visit in large part due to the presence of farmland and other open space lands within the City and without in the surrounding communities.
- (2) The surrounding communities continue to experience substantial residential development pressure because of the social, cultural and education benefits of their proximity to the City of Ann Arbor and other urbanized areas of southeast Michigan.
- (3) Uncoordinated development in the areas around Ann Arbor has affected and may continue to adversely affect the quality of life in Ann Arbor leading to fragmented open space and wildlife habitat; loss of productive farmland and forestland; destruction of rural beauty which is part of the natural historic character of the Ann Arbor community; decline in water quality and the loss of wetlands; increased auto dependency, fuel consumption, traffic congestion and air pollution; relocation of jobs to peripheral area; excessive public costs for roads and utility infrastructure, new and extensions, to dispersed development.
- (4) The conversion of farmland, open space and wetlands to residential or other more developed uses, whether because of its greater market value as residential development property or for other business reasons, is made at the expense of a critical community resource being permanently lost to community residents.
- (5) The City of Ann Arbor adoption of Ordinance No. 37-94, Natural Features Open Space, and Ordinance No. 49-94, Wetlands Preservation Ordinance, and related zoning and planning ordinances for the protection and preservation of open space and wetlands are not sufficient safeguards against the continuing growth and development of residential and commercial uses within and surrounding the City of Ann Arbor.
- (6) The permanent acquisition by the City of Ann Arbor of voluntarily offered interests in farmland, open space, wetlands and other property outside the City, as provided in this chapter and as authorized by the statutes of the State of Michigan will permit these lands

to remain as farmland or otherwise in their current natural state near developing urban areas and provide long-term protection for the public interest in preservation and management of the land.

(7) The continuation of the permanent acquisition of parkland within the City of Ann Arbor and its acquisition of farmland, open space, wetlands and other property in the surrounding communities enhances the Ann Arbor community.

(8) Michigan Public Act 262 of 2000 created an agricultural preservation fund with the State Treasury. Money in this fund may be used to provide grants to local units of government to assist in acquiring agricultural conservation easements provided that the local unit has adopted an ordinance for the purchase of development rights and that the local unit has a comprehensive land use plan that includes a plan for agricultural preservation. Acceptable plans for agricultural preservation can include provisions for uses that allow agriculture and open space designations that allow agriculture.

(9) The voters of the City of Ann Arbor have approved a charter amendment to authorize a one-half mill tax for 30 years to provide funds for preservation and protection of parkland, open space, natural habitats and City sourcewaters by the acquisition and management of land and land rights both within and outside the City of Ann Arbor.

(10) It is the policy of the City of Ann Arbor to protect, preserve and enhance farmland and open space lands through its ordinances, the authority granted it by the Farmland and Open Space Preservation Act (MCL 324.36101 et seq.), the Conservation and Historic Preservation Easement Act (MCL 324.2140 et seq.) and other state and City ordinances and the use of grants, donations and other available fund sources.

(11) The acquisition of land and land rights as provided in this chapter is a public purpose of the City of Ann Arbor.

(Ord. No. 17-04, § 1, 5-3-04)

### **3:62. Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings described in this section unless the context in which they are used specifically indicates otherwise:

(1) *Agricultural rights* means an interest in and the right to use and possess land for the purposes and activities related to open space, natural habitat, horticultural and other agricultural use or open space character.

(2) *Agricultural use* means substantially undeveloped land devoted to the production of plants and animals useful to humans, including fruits, nuts, vegetables, greenhouse plants, berries, herbs, flowers, seeds, nursery stock, grasses, Christmas trees and lumber, forages and sod crops, grains and feed crops, dairy and dairy products, livestock (including breeding and grazing), poultry and poultry products and other similar uses and activities.

(3) *Application* means the documentation and information submitted to the City by a landowner on the approved application form offering to sell, donate or otherwise grant to the City a conservation easement, development rights or title to greenbelt district land.

(4) *City* means the City of Ann Arbor.

(5) *Code* means the Ann Arbor City Code.

(6) *Conservation easement* means a non-possessory interest in real property, which is acquired in accordance with MCL 324.2140 et seq. for the purpose of retaining and enhancing agriculture, preserving natural, scenic or open space values of real property;

restricting or preventing the development or improvement of the land for purposes other than agricultural production; or other like or similar purposes.

(7) *Development* means an activity that materially alters or affects the existing conditions or use of any land in a manner that is inconsistent with agricultural use or open space character.

(8) *Development rights* means an interest in and the right to use, divide or subdivide land for any and all residential, office, commercial, research, industrial, or other use, purposes or activities including intensive animal husbandry operations, not incident to agricultural use or open space character.

(9) *Other eligible land* means land that has a common property line with agricultural land from which development rights have been purchased and that is not divided from that agricultural land by a state or federal limited access highway

(10) *Fair market value purchase* means transfer of full ownership to the City based on a qualified appraisal.

(11) *Full ownership* means fee simple title.

(12) *Greenbelt advisory commission* means the commission formed pursuant to this chapter to advise the City Council in the selection of greenbelt district lands.

(13) *Greenbelt district* is the land area surrounding the City of Ann Arbor in which the Greenbelt Advisory Commission shall exercise its powers as provided by this Chapter; the boundaries of which are hereby established and traverse the following townships as follows:

- a.) Lodi Township - that portion of land located within Sections 1--3 and 10--15, R5E, and lying East of Zeeb Road and North of Pleasant Lake Road.
- b.) Pittsfield Township - that portion of land located within Section 1, 12--24, and to the extent not incorporated within the City, Sections 6-8, R63, and lying North of Textile Road.
- c.) Scio Township - that portion of land located within Sections 1--4, 9-16, 21--28 and 33--36, R5E, and lying west of Zeeb Road.
- d.) Ann Arbor Township all that portion of land within Sections 1--8, 12-13, and to the extent not incorporated within the City, Sections 9--11, 14, 23--25, and 36, R6E, being all the land within the known and designated boundaries of the Township.
- e.) Superior Township-- that portion of land located within Section 3--10, 15--22, and 27--34, R7E, and lying east of Prospect Road.
- f.) Webster Township - that portion of land located within Sections 21--28 and 33--36, R5E, and lying South of 5 Mile Road and west of Zeeb Road.
- g.) Northfield Township -that portion of land located within Sections 19--36, R6E, and lying South of 5 Mile Road.
- h.) Salem Township - that portion of land located within Sections 19--36, R7E, and lying South of 5 Mile Road and west of Curtis Road.

and as shown on the district map which accompanies this chapter, and which, with all notations, references, and other information show thereon, shall be as much a part of this chapter as if fully described herein; and from which, applications for purchases of land and conservation easements will be considered.

(14) *Governmental agency* means the United States or any agency thereof, the State of Michigan or any agency thereof or any municipal corporation.

(15) *Open space character or open space use* means substantially undeveloped land devoted to (a) the maintenance or enhancement of natural processes (e.g. water quality, plant and wildlife habitat, groundwater recharge), (b) scenic enjoyment of the public or (c) otherwise satisfying the standards of sections 5:51 of the Code.

(16) *Owner* means the individual or individuals having fee simple title to the eligible land.

(17) *Parcel* means all property under a single ownership that is included in an application.

(18) *Parkland* means all property undeveloped and developed dedicated for the use of the public as a park.

(19) *Parks advisory commission* means the commission established by resolution of City Council to advise the City Council in the planning, selection, and management of parkland within and outside the City.

(20) *Permitted use* means any use contained within a conservation easement essential to the agricultural use or which does not alter the open space character or natural features of the land.

(21) *Qualified appraisal* means an appraisal done in conformance with the standards in Section 1:320 of the Code.

(22) *Residential development rights* means the right to sell portion of a parcel, or to construct a residence and related accessory buildings such as a garage or shed on a parcel, for residential uses not related to the agricultural use, open space character or natural features of the parcel.

(23) *Substantially undeveloped land* means land on which there is no more than one residential dwelling unit and related accessory buildings such as a garage or shed for each 40 acres of land. For parcels less than 40 acres in existence prior to the date of this chapter, and which cannot be joined to a larger contiguous parcel, substantially undeveloped land means land on which there is no more than 1 residential dwelling unit and related accessory buildings for the parcel.

(Ord. No. 17-04, § 1, 5-3-04; Ord. No. 42-05, § 1, 10-17-05; Ord. No. 26-07, § 1, 8-20-07)

### **3:63. City Council authority.**

The City Council is authorized under state law and this chapter to:

(1) Expend revenue to acquire greenbelt district land in accordance with the criteria and procedures established in this chapter. The interest acquired may either be fee title, development rights, conservation easements, or any lesser interest, easement, covenant or other contractual right pertaining to such rights. Acquisition of land and land rights may be achieved through donation, in whole or in part; or by purchase, grant, covenant or contract but only at a price that is equal to or less than the qualified appraisal. In particular, the City can acquire development rights to agricultural land and other eligible land. The revenue shall be used to acquire greenbelt district land only upon application of the owner and as authorized by this chapter.

(2) Enter into cash purchase contracts, installment purchase contracts, cash purchase/non-cash donation agreements, bargain sale agreements or similar agreements establishing the rights and responsibilities of the City and the owner in the transfer of land, purchase of Development Rights, or the granting of Conservation Easement or other easement or covenant consistent with applicable law and this

chapter.

(3) Enter into contracts with nonprofit land trusts, legally established and in good standing, or other similarly qualified nonprofit groups to participate jointly in the acquisition, retention and management of Greenbelt District Land. and Development Rights, Conservation Easements or other easements in Greenbelt District Land.

(4) Enter into contracts with qualified licensed professionals, nonprofit land trusts, legally established and in good standing, or other similarly qualified nonprofit groups to provide appraisal, environmental analysis and testing, acquisition evaluation and negotiation support, maintenance or other services necessary or appropriate to accomplish the purpose of this chapter.

(5) Enter into agreements for joint acquisition, retention and management of land and development rights, conservation easements or other easements in the greenbelt district with another governmental agency to the extent permitted by law and in accordance with this chapter.

(6) Issue bonds for the borrowing of money for any purpose within the scope of this chapter and the general powers of the City.

(7) Finance the purchase of development rights by special assessments and the issuance of bonds secured thereby, subject to compliance with procedures for the approval and establishment of special assessment districts and the issuance of special assessment bonds contained in the City Charter, City Code and other applicable laws. Such special assessment procedures shall further be subject to the requirements that (a) there be filed with the City Council a petition containing all of the following: (i) a description of the development rights to be purchased, including a legal description of the land from which the purchase is to be made, (ii) a description of the proposed special assessment district, (iii) the signatures of the owners of at least 60% of the land area in the proposed special assessment district, and (iv) the amount and duration of the proposed special assessments, and (b) the City Council specifies how the proposed purchase of development rights will specially benefit the land in the proposed special assessment district.

(Ord. No. 17-04, § 1, 5-3-04; Ord. No. 9-05, § 1, 4-4-05; Ord. No. 23-06, § 1, 5-15-06)

### **3:64. Greenbelt Advisory Commission; established, membership.**

(1) The Greenbelt Advisory Commission (GAC) shall consist of 9 members nominated and approved by the City Council. In making appointments of members to GAC, the City Council shall appoint persons who have expertise or affiliation as follows:

- a. Two members chosen by City Council to serve as representatives of environmental and/or conservation groups.
- b. One member who is an agricultural landowner or operates an agricultural business.
- c. One member who is a real estate development professional.
- d. One member who is a plant or animal biologist.
- e. Three members from the public-at-large.
- f. One member of Ann Arbor City Council.

(2) The terms of office of the first GAC appointed hereunder shall be fixed by the City Council so that the terms of 3 members will be for 1 year, 3 members for 2 years, and 3 for 3 years. After the initial GAC is formed, all members, except the City Council member, thereafter will be appointed for 3 years. The City Council member shall be appointed for a 1-year term. A City

Council member shall cease to be a member of GAC if she/he ceases to be a member of the City Council. All members of GAC shall serve without compensation. A minimum of 6 members shall be residents of the City of Ann Arbor. Appointment of nonresident members shall be in conformance with section 12.2 of the Ann Arbor City Charter.

(3) The City Clerk shall notify City Council at least 45 days prior to the expiration date of the term of office of any person serving on GAC. The City Council shall place on the table the name of all reappointments no later than 60 days after the expiration date of the term of office.

(4) No member shall be allowed to hold over for more than 60 days beyond the term of office fixed by ordinance whether or not a successor has been appointed, except that City Council may extend the term for a period of 60 days upon the vote of at least 6 members of City Council.

(5) No land in which a member of the commission has an ownership or other financial interest will be considered during the tenure of that member or for a period of 1 year from the end of the member's tenure.

(6) No member may serve more than 2 consecutive full terms after his or her initial term.

(7) A member of GAC may be removed by a majority vote of City Council for cause.

(Ord. No. 17-04, § 1, 5-3-04)

### **3:65. Greenbelt Advisory Commission; organization, powers and duties.**

(1) *Organization.* The Commission shall annually elect a chair. The Commission shall meet at a minimum on a quarterly basis at a date, place and time to be determined by the Commission.

A majority of members appointed to the Commission, that is five members, shall constitute a quorum. An affirmative vote of a majority of the members present shall be necessary to authorize any action by the Commission.

Consistent with this chapter and subject to City Council approval, GAC may develop by-laws and standing rules that further define the functional and procedural aspects of GAC's duties and provide for keeping a record of its proceedings.

(2) *Powers and duties.* To advise and make recommendations to the City Council on land matters and enhancing public awareness, commitment and active participation in stewardship of open space, natural features, and parkland including growth and development of parks within the Greenbelt District, land and land rights acquisition, management, and disposition.

- To review and recommend to City Council applications for the purchase of Greenbelt District Land in accordance with the provisions of this chapter.
- To advise City Council on monitoring and enforcement of the terms and provisions of any development rights and/or conservation easements acquired by the City in Greenbelt District Land.
- To publish and present an annual report, which shall include a listing of all parcels of land donated or for which development rights or conservations easements or other easements were acquired, and the method of acquisition; a map showing the location of acquired lands and dates of acquisition; financial cost, and land characteristics; other parcels on which other governmental entities hold development rights or conservation easements; a listing of the number of applications made, the number of unsuccessful applications and the categorical reasons they were not accepted.
- To prepare and present to City Council and the City Administrator an annual budget for land and land rights acquisition, preservation, and management within the Greenbelt District.

- To review and recommend to City Council and the City Administrator alternate sources of funding, such as grants, gifts, endowments, etc., for land and land rights acquisition, preservation, and management.
- To work collaboratively with other City boards and commissions which have responsibilities for specific issues, including but not limited to: Planning Commission, Environmental Commission, Parks Advisory Commission.
- To hold public forums, separately or with other City boards or commissions, for the purpose of identifying needs in the community on natural lands matters.
- To meet with commissions, in other jurisdictions, and other public and private organizations to address regional and state land and land rights preservation matters.

In addition to the powers and functions herein provided, City Council may delegate to the GAC by resolution other powers and functions permitted by law concerning the acquisition of development rights.

(Ord. No. 17-04, § 1, 5-3-04)

### **3:66. Parks Advisory Commission; powers and duties.**

In addition to those powers and duties established by City Council, the Parks Advisory Commission shall have the ability to recommend purchase or lease of Greenbelt District Land, provided that written confirmation has been obtained from GAC that this Land is not under consideration by GAC. PAC shall request this confirmation in writing. If a response is not received from GAC within 90 days, PAC shall be free to initiate consideration of the parcel in question for inclusion in the City Park system.

(Ord. No. 17-04, § 1, 5-3-04; Ord. No. 23-06, § 2, 5-15-06)

### **3:67. Greenbelt district land; description of greenbelt district.**

Land and land rights voluntarily acquired under the provisions of this Ordinance shall include:

- (1) Land outside the incorporated boundaries of the City of Ann Arbor within the Greenbelt District; except that a Parcel dissected by the Greenbelt District boundaries as defined in Section 3:62(13) may be acquired in its entirety in the same manner under the provisions of this Ordinance as if the Parcel was within the Greenbelt District.
- (2) Nothing in this Section alters or is intended to alter the designation of existing and future areas of the City under Section 5:10.1 of the Code as AG-agricultural-open space district.

(Ord. No. 17-04, § 1, 5-3-04; Ord. No. 23-06, § 3, 5-15-06)

### **3:68. Greenbelt district land; criteria for selection.**

The following criteria shall be used in determining the order in which Applications will be prioritized for review and recommendation by the appropriate Commission to the City Council for acquisition:

- (1) *General.* The philosophy and principles of the land acquisition process for open space by which GAC will conduct its recommendation process are outlined in the finding stated in this Ordinance.

(2) *Process.* GAC shall publish notice annually in a newspaper of general circulation in the City. The notice shall invite Owners that meet the primary criteria outlined below to make Application for sale of Greenbelt District Land or Development Rights, Conservation Easements or easements in Greenbelt District Land. Application materials shall be available from the City Clerk and shall include a summary of the criteria and guidelines for selection and a list of required documentation that must be attached to the Application. Applications may be made at any time, but need not be considered until the next regular meeting of GAC. GAC shall have the right to convene extraordinary meetings to consider purchases requiring timely action.

(3) *Land acquisition criteria.* Sites for consideration shall be evaluated using the criteria listed below together with any other criterion determined by GAC to be appropriate to accomplishing the purpose of this Ordinance.

a. *Agricultural land criteria:* Characteristics of the land: type of agricultural land, parcel size, road frontage, wetlands and/or floodplain, groundwater recharge, natural features

*Context:* distance to city limit, adjacent zoning classification, adjacent land use, proximity to protected land, scenic and/or historical value

*Acquisition considerations:* matching funds, landowner contribution, urgency for acquisition, recreation potential

b. *Open Space land criteria:* Characteristics of the land: mature trees or rare species, parcel size, road frontage, wetlands and/or floodplain, groundwater recharge

*Context:* distance to city limit, adjacent land use, proximity to protected land, proximity to water resource frontage, scenic and/or historical value, number of vehicle trips per day

*Acquisition considerations:* matching funds, landowner contribution, urgency for acquisition, recreation potential

(4) *Land Acquisition Mechanisms:*

a. Purchase of Development Rights (PDR) shall be the preferred method of protecting Agricultural Land and Other Eligible Land. The conditions and regulations applicable to such land is set forth in Section 3:71.

b. Open Space may be protected by Conservation Easements or fee simple purchase, lease or other interests in land.

(5) Any Application which fulfills the criteria set forth in this Ordinance and in the regulations adopted by the GAC and approved by City Council, but which is not offered a contract to purchase because available funds are not sufficient within the current fiscal year, shall be considered in the next Application cycle, provided that the Owner updates the information on the Application or states that the information is accurate. These Applications shall not be given any preference or priority at that time, but will be considered under the terms and conditions of this Ordinance along with all other Applications submitted at that time.

(6) Owner shall be and remain subject to all ordinances, rules and regulation of the Governmental Agency having jurisdiction over the Greenbelt District Land regardless of the transfer to and the acquisition of Development Rights, Conservation Easements or other easements in the Greenbelt District Land by the City whether now in effect or which may be subsequently adopted for the regulation of land uses or for the protection of the health, safety and welfare of residents of the jurisdiction.



(7) The City, its officials, employees and agents shall not be liable for any injury that may occur to any person, or for any damage that may occur to any property, as a result of any act, decision or other consequence or occurrence arising out of the acts or omission of the Owner or any person or entity other than the City based on the existence of an Application or the acquisition of Development Rights, Conservation Easements or other easements in Greenbelt District Land.

(Ord. No. 17-04, § 1, 5-3-04; Ord. No. 23-06, § 4, 5-15-06)

### **3:69. Application procedure; approval by City Council.**

In order for an Application to be considered for purchase, it must meet the following:

- (1) The applicant or applicants must have good, marketable, fee simple title to the Greenbelt District Land.
- (2) The parcel of land proposed for purchase must be located within the Greenbelt District; except as provided in Section 3:67.
- (3) If a development rights purchase, the applicant or applicants must agree to maintain the land in accordance with a conservation easement approved by City Council.
- (4) A completed Application must be submitted on the approved application form by the deadline established by GAC. An Owner or a duly authorized representative of the Owner may apply. All applications must be signed. A separate Application is required for each parcel of land offered for acquisition. GAC shall establish and publish procedures for submission and to assist Owners with the application process. These procedures shall be available from the City Clerk.

The following information shall be included in a completed Application:

- a. Adequate identification by deed reference of the parcel of land to be considered for purchase. The description should also include a map showing the location of the parcel with the Greenbelt District.
- b. A description of the Agricultural Use carried out on the parcel or other current uses on the parcel.
- c. A statement by the Owner of any contingencies that the Owner wishes to make GAC aware of that may affect the property in the future (such as death, estate plans, etc.)
- d. A description of the features of the property, such as presence of water bodies, scenic views, streams, wetlands, rare species, or other desirable feature.
- e. A statement by the Owner granting access for the purpose of inspection and appraisal of the parcel by the City, its employees or contractors and GAC.
- f. A list of any and all liens and encumbrances on the parcel.
- g. Existence of any surface or subsurface leases or easements.
- h. All other information requested on the Application.

If the Application is complete and the minimum criteria established are met, the Application shall be evaluated. A member of GAC, authorized contractor or City staff assigned to GAC, shall view each Greenbelt District Land Application and a written report shall be made to GAC prioritizing the Applications according to the established selection criteria.

After consideration of the written report, GAC shall determine the annual list of Owners with which negotiation for purchase of land or land rights will be initiated. The determination shall be made

with the goal of purchasing Greenbelt District Land, Development Rights and Conservation Easements from as many Owners as possible in order to accumulate a critical mass of land to be retained for preservation and management purposes.

Prior to initiating formal negotiation, a title search shall be completed to determine if the Owner has clear, marketable, fee simple title to the Greenbelt District Land. For purchases of development rights or conservation easements, a "before and after" Qualified Appraisal of the property and the interest offered for purchase shall be conducted. The Qualified Appraisal shall contain an analysis of the highest and best use of the parcel of land, the valuation methodology used by the appraiser to determine value, the fair market value of the full ownership of the land (excluding the buildings thereon, if any), and the value of the Agricultural Rights and any Residential Developments Rights to be retained by the Owner for Development Right purchases; or the value of all rights to be retained by the Owner for Conservation Easement purchases. The value of the Owner's retained rights or interest in the land shall be listed separately in the Qualified Appraisal. For purchases of land in fee simple, the Qualified Appraisal shall contain only the analysis of the highest and best use of the parcel of land, the valuation methodology used by the appraiser to determine value and the fair market value of the full ownership of the land (excluding the buildings thereon, if any). If appropriate, an environmental assessment, soil analysis, boundary survey or other testing may be conducted. At the conclusion of all testing and completion of the title search, a complete property analysis, including a baseline documentation of the property, and recommendation shall be prepared as to whether negotiation should continue. The Owner shall be entitled to a copy of the property analysis.

GAC or another authorized negotiator on behalf of the City shall submit a written offer to purchase to the Owner. The offer shall be for a time certain accompanied by a proposed deed of easement or title in accordance with the offer made in the Application.

An Owner may, at his or her own expense, provide additional information to GAC on the findings and determinations included in the property analysis or withdraw his or her Application within 30 days of receipt of the property analysis.

After receipt of all information relating to an Application, GAC shall forward a recommendation for acquisition to City Council for action.

(Ord. No. 17-04, § 1, 5-3-04; Ord. No. 23-06, § 5, 5-15-06)

### **3:70. Related costs.**

The costs of appraisal, engineering, surveying, planning, financial, environmental, legal or other services lawfully incurred incident to the acquisition of Greenbelt District Land or Development Rights, Conservation Easements or other easements or leasehold interest in Greenbelt District Land by the City in accordance with this Ordinance shall be paid by the City. The City shall not be responsible for expenses incurred by the Owner incident to Owner's Application to or sale of Greenbelt District Land.

(Ord. No. 17-04, § 1, 5-3-04; Ord. No. 23-06, § 6, 5-15-06)

### **3:71. Retained residential development rights.**

(1) To promote "agricultural use" of properties on which the City has purchased the Development Rights, it has been determined that such properties should remain substantially undeveloped.

(2) In order to ensure environmentally responsible agricultural practices on properties which the City has purchased the Development Rights, such properties must conform to the USDA's Generally Accepted Agriculture Management Practices (GAAMPs) and a Conservation Plan shall be developed by the local Natural Resource Conservation Service (NRCS) office. The Conservation Plan must be updated every 10 years and monitored by NRCS and the City

annually. The Conservation Plan shall be written using current standards and specifications at the time of plan development.

(3) It may be in the best interest of property owners and of the program to purchase development rights that property owners retain some residential development rights so long as the land remains substantially undeveloped. When property owners retain some development rights their land value remains higher than it would be if they sold all their development rights and the value of the development rights to be purchased is correspondingly reduced.

(4) Conservation easements conveying development rights to the City may include a provision for a landowner to retain the right to build additional residential dwellings on the following schedule:

0--40 acres:

41--80 acres:

81--160 acres:

161 and more acres:

Initially, these dwellings must be owned or occupied by a direct family member or for a farm laborer with a demonstrable employment record or financial risk in the farming operation.

(5) Both residential and non-residential buildings must be identified in the negotiated Conservation Easement in order to protect other important features of the property. Building locations and lot sizes must also conform to existing zoning in the municipality where the property is located. The total impervious surface area for new and existing buildings and roads (which includes non-seasonal, permanent rooftops, concrete and asphalt) must not exceed 2% of the total easement area defined in the Conservation Easement granted to the City.

(6) A landowner may choose to omit a maximum of 2 residential building lots from the nominated property of the minimum size allowed by local zoning. GAC and City Council may consider such omission when evaluating on which properties to purchase development rights.

(7) Once action to select properties for the purchase of development rights has been taken by City Council, a baseline documentation report will be prepared describing through photographic, pictorial and narrative means the condition of the property at the time of the grant and a development rights easement. The baseline report shall contain a signature page where the Owner and the Supervisor sign to state that the report is an accurate description of the property at the time of grant. The easement shall similarly feature a page where the signatures of the Owner and the Mayor are notarized, following which the easement shall be recorded with the county register of deeds so that it is effective on all current and future owners.

(Ord. No. 17-04, § 1, 5-3-04; Ord. No. 23-06, § 7, 5-15-06)

### **3:72. Open space and parkland preservation fund established.**

Revenues received for preservation and protection of open space, parkland, natural habitats and City sourcewaters through acquisition and management of Greenbelt District Land and the development rights, conservation easements and other easements on Greenbelt District Land shall be placed in a designated Open Space and Parkland Preservation Fund which is hereby created in the City budget. Revenues for the purpose of this section shall include millage funds, designated monetary gifts, unrestricted grants, and any investment income earned in the Fund.

The Fund shall be invested and managed in the same manner as existing funds of the City. No part of the fund may be transferred to any other fund, nor be encumbered, nor be utilized for any purpose except the purposes specifically set forth in this chapter. Expenditures from the fund require authorization of City Council

(Ord. No. 17-04, § 1, 5-3-04; Ord. No. 23-06, § 8, 5-15-06)

### **3:73. Duration of acquired rights; release.**

(1) Development rights acquired pursuant to Section 3.61(9) of this chapter shall be held in trust by the City for the benefit of its citizens in perpetuity. After 50 years have passed, however, the owner may make application to GAC to re-purchase the development rights. GAC shall review such application and determine whether the property has (a) become landlocked with non-agricultural uses, (b) farming is no longer feasible and (c) the release is for the public good. GAC shall evaluate the feasibility of farming by determining whether the land is no longer and never will be suitable for any kind of agriculture, with wooded land or land left fallow not necessarily to be considered unsuitable. GAC shall hold a public hearing to gain input from citizens on the application and make recommendation to City Council on the request.

(2) Upon receiving the recommendations of GAC, City Council shall take final action on such recommendations. Council must support the request by an owner to repurchase development rights by a 9-member majority of the total 11 members of Council. For properties 100 acres and greater, Council's 9-member majority support of the request shall result in a referendum to allow the public to decide the matter. If Council or the public supports the request, the owner shall have 1 year to complete the process of re-purchasing the rights and all associated actions. All costs associated with the request shall be borne by the applicant.

(3) For those properties which City Council approves the return of development rights as specified in Subsection (1), GAC shall cause an appraisal of the applicant's property interest to be made at the owner's expense. Payment for this appraisal shall be made by the owner in advance. A "before and after" appraisal shall be made to determine the value of development rights. One appraisal shall determine the fair market value of full ownership of the land (excluding buildings thereon) and one shall determine the fair market value of the agricultural rights plus any specifically retained residential development rights.

(4) Appraisals shall be performed as required by Section 1:320 of Ann Arbor City Code. The selected appraiser shall not have a property interest, personal interest or financial interest in the subject lands. In the event that the low bidder has a conflict of interest associated with a potential easement, the second low bidder will conduct that appraisal. In any event, the same appraiser shall conduct the before and after appraisals.

(5) Appraisals shall be in writing and shall be furnished to the respective owners for review. Errors of fact in any appraisal may be called to the attention of the appraiser by GAC or by owners of the property appraised, but corrections of the appraisal may be made only by the appraiser.

(6) At any time in this process, the owner may choose to withdraw the request for the return of development rights without penalty, while still being responsible for the City's appraisal of the property as specified in Subsection (2) and any other costs incurred.

(7) If City Council approves return of development rights as specified in Section 3:73(1) of this chapter, the City shall have a right of first refusal to purchase the remaining rights at the fair market value of the agricultural rights plus any retained development rights, as determined by the appraisal required in 3:73(3) of this chapter, for the purposes of a City park or other publicly-accessible property. Upon receiving the recommendations of GAC, City Council shall take final action on such recommendations. If Council chooses to exercise this right of first refusal, an offer to purchase the remaining rights at the appraised value shall be submitted within 180 days. Acquisition of lands for public purposes shall be made with funds designated for such purchases and not with funds authorized for development rights acquisition pursuant to this chapter. The owner may at that time choose to not sell the remaining rights and instead retain ownership of the property. If Council approves the sale of development rights back to the owner, proceeds

from that sale shall be placed in the Greenbelt and Open Space Acquisition Fund as specified in Section 3.73 of this chapter.

(8) If (a) a request to re-purchase development rights is denied by City Council or the public, or (b) the landowner chooses to not sell the remaining rights when the City chooses to exercise its right of first refusal or (c) more than a year passes from Council's authorization for the re-purchase of rights, the landowner must wait 5 years before re-applying to re-purchase development rights.

(9) The City may convey development rights acquired pursuant to this chapter to a conservation, open space preservation, historic preservation or similar organization under terms ensuring that the public benefits for which the Township purchased the development rights will be maintained.

(Ord. No. 17-04, § 1, 5-3-04)

### **3:74. Enforcement.**

City staff shall administer and enforce and the City Attorney shall prosecute this chapter and development rights and conservation easements agreements. GAC will advise and make recommendations to City Council concerning monitoring and investigation of complaints of violation of City acquired land and land rights outside of the park system. GAC shall at least once annually ascertain whether the owner is complying with all conditions of the easement or deed. Inspection findings shall be in writing and maintained. Any violation identified shall be referred to the City Attorney.

(Ord. No. 17-04, § 1, 5-3-04)

### **3:75. Administrative costs.**

Reasonable administrative expenses can be paid from the parks and greenbelt millage revenues for the acquisition, lease, or donation, in whole or in part, of parkland and conservation easements, land and land rights, inside and outside the City. These expenses shall not exceed the amount determined by the following formula:

(A) \$2,000 for each potential acquisition or leasehold Parcel approved by either the Park Advisory Commission or the Greenbelt Advisory Commission for negotiation with property owners plus (B)(1) 6% of the principal amount of each series of bonds issued to finance all or part of the parks and greenbelt program ("Open Space Bonds") plus (2) 6% of the annual millage revenue in excess of annual debt service requirements on Open Space Bonds; provided, that, projections of property tax valuations and millage collections over the term of the millage, which projections are approved by City Council at the time of issuance of each series of Open Space Bonds, demonstrate that the permitted amount for administrative expenses under part B of such formula will not exceed 6% of the total millage collections over the term of the levy.

The following activities shall be considered administration expenses that may be paid for from the millage revenues:

- Staff or consultant time, including benefits, devoted directly to the acquisition process.
- Staff or consultant time, including benefits, devoted directly to program support.
- Travel/vehicle costs incurred.
- Administrative expenses directly attributable to program support or the acquisition process.
- Monitoring of acquired development rights and/or conservation easements.

- Enforcement of acquired development rights and/or conservation easements
- Legal expenses directly related to the acquisition of or leasing of property or property interests, including staff or outside counsel time.

The actual cost of property or property interests, or the actual cost of lease or leasehold interests, plus charges for the items on the list to follow, can be paid from millage revenues, but are not considered administrative expenses and are not subject to the limits on the appropriation of administrative expenses.

- Title commitments.
- Payment of property taxes on acquired or leased property.
- Preparation of appraisals of property.
- Preparation of surveys of property.
- Preparation of Phase 1 Environmental Assessments of property, as well as subsequent Phases/baseline environmental studies and any related due care plan, if required.
- Baseline documentation for development rights and/or conservation easements.
- Costs directly related to the sale of bonds supported by this millage.

The following activities shall not be paid for by funds provided by this millage:

- Operating, maintenance, repair, restoration, and development costs for acquired properties, or interests in properties, except as otherwise provided in this Section.
- Any overhead charges, such as a municipal service charge.
- Activities of the City Administrator, Mayor or City Council.
- Activities related to City ordinances or resolutions.
- Charges for any staff time not directly related to the purpose of this millage.
- Charges for office space or utilities.

(Ord. No. 17-04, § 1, 5-3-04; Ord. No. 9-05, § 2, 4-4-05; Ord. No. 23-06, § 9, 5-15-06)

### **3:76. Reserved.**

**Editor's note:** Ord. No. 23-06, § 10, adopted May 15, 2006, repealed § 3:76, which pertained to donations. See also the Code Comparative Table.

### **3:77. Audit.**

The City shall, on an annual basis, provide for public review a financial statement of its activities, including detailed expenditures for program staffing, land and easement acquisition, related costs and all other expenditures for implementing the parks and greenbelt acquisition program. This financial statement will be based on the independent financial audit of the City's finances.

(Ord. No. 17-04, § 1, 5-3-04)