

TOWNSHIP OF BOSTON
COUNTY OF IONIA, MICHIGAN
ORDINANCE NO. 01-2, AS AMENDED
SITE CONDOMINIUM ORDINANCE

THE TOWNSHIP OF BOSTON ORDAINS:

Section 1. Purpose and Scope. Site Condominium projects are condominium developments in which each condominium unit consists of an area of vacant land and a volume of vacant air space within which a building or other improvements may be constructed by the condominium unit owner. Each site condominium unit may also have an appurtenant limited common element reserved for the exclusive use of the owner of the condominium unit. Either the condominium unit by itself, or the condominium unit taken together with any contiguous, appurtenant limited common element, shall be considered to constitute a building site which is the functional equivalent of a “lot” for purposes of determining compliance with the requirement of applicable laws, ordinances and regulations. Site condominium projects may also include general common elements consisting of common open space, recreational areas, streets and other areas available for use by all owners of condominium units within the project.

This Ordinance requires preliminary review by the Township Board followed by final review and approval by the Township Board of site condominium project plans to ensure that site condominium projects comply with this Ordinance and other applicable laws, ordinances and resolutions. Site condominium projects may be approved as provided by this Ordinance.

Section 2. Definitions. For purposes of this Ordinance, the following words and phrases are defined as follows:

(a) “Building envelope” means the area of a condominium unit within which the principal building or structure may be constructed, together with any accessory structures, as described in the master deed for the site condominium project. In a single-family residential site condominium project, the building envelope refers to the area of each condominium unit within which the dwelling and any accessory structures may be built.

(b) “Building site” means either:

(i) The area within the site condominium unit by itself (i.e., exclusive of any appurtenant limited common element), including the area under the building envelope and the area around and contiguous to the building envelope; or

(ii) The area within the condominium unit as described in Section 2(b)(i), taken together with any contiguous and appurtenant limited common element. For purposes of determining compliance with the applicable

requirements of this Ordinance (including, without limitation, height, area, yard and density requirements) or with other applicable laws, ordinances or regulations, a “building site” shall be considered to be the equivalent of a “lot.”

(c) “Condominium Act” means Public Act 59 of 1978, as amended.

(d) “Exempt change” means a change to a site condominium project (other than a major or minor change) that is exempt from review and approval as required for major or minor changes under this Chapter. Exempt changes shall be limited to the following:

(i) a change in the name of the project; in the name of a street within the project; or in the name of the developer of the project;

(ii) a change in the voting rights of co-owners or mortgages; or

(iii) any other change in the site condominium project which, as determined by the Township Board, does not constitute a major or minor change or will not otherwise change the site configuration, design, layout, topography or any other aspect of a project which is subject to regulation under this Ordinance.

(e) “Limited common element” means an area which is appurtenant to a site condominium unit and which is reserved in the master deed for the site condominium project for the exclusive use of the owner of the site condominium unit.

(f) “Major change” means a change in the site configuration, design, layout or topography of a site condominium project (or any portion thereof), including any change that could result in:

(i) an increase of 20% or more in the number of site condominium units;

(ii) a reduction of 5% or more in the area of the building site for any site condominium unit;

(iii) a reduction of 5% or more in the total combined area of the general common elements of the site condominium project;

(iv) a reduction of 5% or more in the total combined area of all limited common elements of the site condominium project; or

(v) any other change in the site configuration, design, layout, topography or other aspect of the project which is subject to regulation under this Ordinance, including, without limitation, a change in the location of streets and utilities, or in the size, location, area, horizontal boundaries or vertical boundaries of a site condominium unit, and which is determined by the Township Board to constitute a major change to the site condominium project.

(g) “Minor change” means a change in the site configuration, design, layout or topography of a site condominium project (or any portion thereof), including any change that will result in:

(i) an increase of less than 20% in the number of site condominium units or a decrease in the number of site condominium units;

(ii) a reduction of less than 5% in the area of the building site for any site condominium unit;

(iii) a reduction of less than 5% in the total combined area of the general common elements of the site condominium project;

(iv) a reduction of less than 5% in the total combined area of all limited common elements of the site condominium project; or

(v) any other minor variation in the site configuration, design, layout, topography or other aspect of the project which is subject to regulation under this Ordinance, and which, as determined by the Township Board, does not constitute a major change.

(h) “Site condominium project” means a plan or project consisting of not less than two site condominium units established in compliance with the Condominium Act.

(i) “Site condominium project plan” means the plans, drawings and information prepared for a site condominium project as required by Section 66 of the Condominium Act and as required by this Ordinance for review of the project by the Township Board.

(j) “Site condominium unit” means a condominium unit established in compliance with the Condominium Act which consists of an area of vacant land and a volume of vacant air space, designed and intended for separate ownership and use as described in the site condominium project master deed, and within which a building or other improvements may be constructed by the condominium unit owner.

(k) Except as otherwise provided by this Ordinance, the following words and phrases, as well as any other words or phrases used in this Ordinance which are specifically defined in the Condominium Act, shall conform to the meanings given to them in the Condominium Act: “common elements,” “condominium documents,” “condominium unit,” “contractible condominium,” “convertible area,” “expandable condominium,” “general common elements” and “master deed.”

Section 3. *Review of Preliminary Plans by the Township Board.*

(a) Prior to final review and approval of a site condominium project plan by the Township Board, a preliminary site condominium project plan shall be reviewed by the Township Board in accordance with the procedures, standards and requirements provided by this Ordinance.

(b) Application for review and approval of a site condominium project plan shall be initiated by submitting to the Township Clerk:

(i) A minimum of ten (10) copies of a preliminary site condominium project plan which complies with the requirements of Section 6; and

(ii) An application fee in accordance with the fee schedule established by resolution of the Township Board. The Township Clerk shall forward the copies of the preliminary plan to the Township Board.

(iii) The required initial amount to be deposited into an escrow account, whereby the applicant shall reimburse the Township through withdrawals from the account for all expenses incurred by the Township for professional, consulting and other services pertaining to the application for, and the inspection, approval and construction of the site condominium. The applicant shall add to the escrow account as required by the Township Supervisor, so as to assure that adequate funds are available to meet anticipated or incurred expenses. The escrow account shall contain adequate funds to satisfy anticipated final expenses before site condominium approval is granted. The applicant shall otherwise comply with the terms of the Township Board resolution pertaining to the escrow account and the use of funds therein.

Upon receiving a complete preliminary site condominium project plan, the application fee and the initial deposit into the escrow account, the Township Clerk shall forward the application and the copies of the preliminary plan to the Township Board.

(c) The full Township Board shall review the preliminary site condominium project plan in accordance with the standards and requirements contained in Section 4 of this Ordinance, and in accordance with the following additional standards and requirements:

(i) In its review of a site condominium project plan, the Township Board may consult with the Township Attorney, Township Engineer, Township Fire Chief, Township Planner or other appropriate persons regarding the adequacy of the proposed common elements and maintenance provisions, use and occupancy restrictions, utility systems and streets, project layout and design or other aspects of the proposed project.

(ii) The building site for each condominium unit shall comply with all applicable provisions of law, including minimum lot area, minimum lot width, required front, side and rear yards and maximum building height. For example, the area and width of the building site shall be used to determine compliance with the minimum lot area and lot width requirements, if applicable. Compliance with front, side and rear yards, if any, shall be determined by measuring the distance from the equivalent front, side or rear yard boundaries of the building site to the closest respective front, side or rear boundary of the building envelope.

(iii) If a site condominium project is proposed to have public streets, the streets shall be paved and developed to the minimum design, construction, inspection, approval and maintenance requirements for platted public streets as required by the Ionia County Road Commission. All private streets in a site condominium project shall be developed to the minimum design, construction, inspection, approval and maintenance requirements as provided by the Boston Township Private Road Ordinance.

(iv) The site condominium project shall be connected to the Township's water and sanitary sewer facilities, if available. If public water and sanitary sewer facilities are not available, each condominium unit shall either be served by a private central system (designed for connection to a public system when and if a public system is made available), or shall have a well, septic tank and drain field located within the condominium unit's building site. Water and sanitary sewer facilities shall be approved by the Ionia County Department of Health and the Township in accordance with applicable standards.

(v) The Township Board shall require that portions of the plan be submitted to the Ionia County Health Department, Ionia County Road Commission, Ionia County Drain Commission, Michigan Department of Natural Resources, Michigan Department of Environmental Quality, Michigan Department of Public Health and other appropriate state and county review and enforcement agencies having direct approval or permitting authority over any aspect of the proposed site condominium project as relevant to such agencies' authority.

Section 4. *Township Board Preliminary Recommendation.* After reviewing the preliminary site condominium project plan, the Township Board shall prepare a written statement of recommendations regarding the proposed site condominium project, including any suggested or required changes in the plan. The Township Board shall provide a copy of its written recommendations to the applicant.

Section 5. *Review and Approval of Final Plans by Township Board.*

(a) After receiving the Township Board's preliminary recommendations on the preliminary plan, the applicant shall submit to the Township Clerk a minimum of ten (10) copies of a final site condominium development plan which complies with the requirements of this Section and of Section 6. The Township Clerk shall forward the copies of the final plan to the Township Board.

(b) The final site condominium project plan submitted by the applicant shall incorporate all of the recommendations, if any, made by the Township Board based on its prior review of the preliminary plan. If any of the Township Board recommendations are not incorporated in the final plan, the applicant shall clearly specify in writing which recommendations have not been incorporated. Except for changes made to the plan as necessary to incorporate the recommendations of the Township Board, the final plan shall

otherwise be identical to the preliminary plan which was reviewed by the Township Board.

(c) After preparing its preliminary recommendation on the preliminary plan and receiving a final site condominium development plan from the applicant, the Township Board shall proceed to review and may approve, deny or approve with conditions the plan in accordance with the standards provided by Section 3 and other applicable procedures, standards and requirements provided by this Ordinance.

(d) As a condition of approval of a final site condominium project plan:

(i) The Township Board may require that a cash deposit, certified check, irrevocable bank letter of credit or surety bond acceptable to the Board covering the estimated cost of improvements associated with the site condominium project for which approval is sought be deposited with the Township.

(ii) The Township may impose additional reasonable conditions of approval as provided by Section 5 of this Ordinance.

(iii) The Township Board shall require that all amounts owed by the applicant to the Township in connection with the site condominium project, shall be paid in full, including the application fee, reimbursement of all Township expenses in the matter by means of deposit of sufficient funds into the escrow account and other amounts, if any. The Township Board may withhold approval of the final site condominium project plan until all of such amounts are paid in full.

Section 6. *Contents of Site Condominium Project Plans.* A condominium project plan shall include the documents and information required by Section 66 of the Condominium Act and as determined necessary by the Township Board for review of a preliminary plan or by the Township Board for review of a final plan, and shall also include the following:

(a) The use and occupancy restrictions and maintenance provisions for all general and limited common elements that will be included in the master deed.

(b) A storm drainage and a storm water management plan, including all lines, swales, drains, basins and other facilities and easements granted to the appropriate municipality for installation, repair and maintenance of all drainage facilities.

(c) A utility plan showing all water and sewer lines and easements granted to the appropriate municipality for installation, repair and maintenance of all utilities.

(d) A narrative describing the overall objectives of the proposed site condominium projects.

(e) A narrative describing the proposed method of providing potable water supply, waste disposal facilities and public and private utilities.

(f) A street construction, paving and maintenance plan for all private streets within the proposed condominium project.

Section 7. Construction in Compliance with Approved Final Site Condominium Project Plan. No building or structures shall be constructed nor shall any other site improvements or changes be made on the property in connection with a proposed site condominium project except in compliance with a final site condominium project plan as approved by the Township Board, including any conditions of approval.

Section 8. Commencement of Construction; Issuance of Permits. No construction, grading, tree removal, soil stripping or other site improvements or changes shall be commenced by any person and no building, construction or grading permits shall be issued by the building inspector for a site condominium project until (1) a final site condominium project plan has been approved by the Township Board, (2) all conditions to commencement of construction imposed by the Township Board have been met, and (3) all applicable approvals or permits from appropriate county and state review and enforcement agencies have been obtained for the project.

Section 9. Expandable or Convertible Condominium Projects. Approval of a final site condominium project plan shall not constitute approval of expandable or convertible portions of a site condominium project unless the expandable or convertible areas were specifically reviewed and approved by the Township Board in compliance with the procedures, standards and requirements of this Ordinance.

Section 10. Review and Approval of Changes to Approved Site Condominium Projects. Any change proposed in connection with a project for which a final site condominium project plan has previously been approved by the Township Board shall be subject to review as provided by this Section:

(a) Any change which constitutes a major change shall be reviewed by the Township Board as provided by this Ordinance for the original review and approval of preliminary and final plans.

(b) Any change which constitutes a minor change shall be reviewed and approved by the Township Board, without the need for a public hearing.

(c) Any change which constitutes an exempt change shall not be subject to review by the Township under this Ordinance, but a copy of the changes proposed (and of the changes made, if different than proposed) shall be filed with the Township Clerk.

Section 11. Incorporation of Approved Provisions in Master Deed. All provisions of a final site condominium project plan which are approved by the Township Board as provided by this Ordinance shall be incorporated by reference in the master deed for the site condominium project. Further, all major changes to a project shall be incorporated by reference in the master deed. A copy of the master deed as filed with the Ionia County Register of Deeds for recording shall be provided to the Township within ten (10) days after filing the plan with the County.

Section 12. *Approval Effective for One (1) Year.* No approval of a final site condominium project plan by the Township Board shall be effective for a period of more than one year, unless construction of the project commences within that one (1) year period and is diligently pursued to completion in accordance with the terms and conditions of the approval. This one (1) year period may be extended by the Board in its discretion for additional periods of time as determined appropriate by the Board if the extension is applied for by the applicant within the effective period of the approval.

Section 13. *Exemption of Existing Project.*

(a) This Ordinance shall not apply to any site condominium project which is determined by the Township Board to have met the following conditions as of the effective date of this ordinance (an “existing” project):

(i) A condominium master deed was recorded for the project with the Ionia County Register of Deeds in accordance with the requirements of the condominium Act and other applicable laws and ordinance; and

(ii) The project fully complied with all other applicable requirements under Township ordinances in effect on the date when the condominium master deed was recorded.

(b) The exemption provided by this Section shall apply only to an existing project as described in the condominium master deed recorded for the project on the effective date of the ordinance, including any subsequent change which would constitute:

(i) An exempt change, whether or not the Condominium Act would require an amendment of the master deed as a result of the change; or

(ii) A minor change for which the Condominium Act would not require an amendment of the master deed.

However, this exemption shall not apply to any subsequent expansion, conversion of replatting of the project, or subsequent major change to the project, which shall be fully subject to the applicable review and approval requirements as provided by this Ordinance.

Section 14. *Violation and Penalty.*

(a) *Municipal Civil Infraction.* A violation of this Ordinance or a violation of any approval granted hereunder is a municipal civil infraction, for which the fine shall be \$500 for the first offense, and not less than \$1,000 nor more than \$2,500 for subsequent offenses, in the discretion of the court, and in addition to all other costs, damages, expenses and actual attorney fees incurred by the Township in enforcing the ordinance. For purposes of this section, “subsequent offense” means a violation of this Ordinance committed by the same person within 12 months of a previous violation of the ordinance for which said person admitted responsibility or was adjudicated to be responsible, provided, however, that offenses committed on subsequent days within a period of one

week following issuance of a citation for a first offense shall be considered separate first offenses. Each day that such violation occurs shall constitute a separate offense.

(b) *Injunctive Relief.* In addition, a violation of this Ordinance or a violation of any approval granted hereunder is hereby declared to be a nuisance per se. The issuance of a municipal civil infraction and imposition of the foregoing municipal civil infraction penalties against a violator shall not prohibit the Township from also seeking injunctive relief against a violator, in order to abate the violation or to seek such other relief provided by law.

Section 15. Severability. The provisions of this Ordinance are hereby declared to be severable; and, if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of this Ordinance other than said part or portion thereof.

Section 16. Repeal. The provisions of any Township ordinance in conflict with the provisions of this Ordinance are hereby repealed.

TOWNSHIP OF BOSTON

Lori Spoelstra
Township Clerk

Ordinance No. 01-2, adopted March 14, 2001, and effective March 24, 2001
Ordinance No. 02-8, adopted February 13, 2002, and effective March 21, 2002
Ordinance No. 09-11, adopted September 9, 2009, and effective October 19, 2009
Ordinance No. 09-12, adopted November 11, 2009, and effective November 21, 2009