

**STATE OF MICHIGAN
COUNTY OF LIVINGSTON
TOWNSHIP OF MARION**

**PURCHASE OF DEVELOPMENT RIGHTS
GENERAL ORDINANCE NO. 23-01**

ARTICLE I: INTENT, PURPOSE, AND SHORT TITLE

Section 1.1 Intent and Purpose

The intent and purpose of the proposed Purchase of Development Rights (PDR) ordinance in Marion Township is to protect and preserve the valuable agricultural land, conserve natural resources, protect scenic and cultural heritage, provide landowner benefits, and promote community collaboration. The ordinance aims to create a framework that encourages voluntary land conservation, supports sustainable agriculture, and safeguards the rural character, environmental integrity, and quality of life in Marion Township for future generations.

1. **Preservation of Agricultural Land.** The primary objective of the PDR ordinance is to preserve productive agricultural land within Marion Township. By offering incentives to landowners, the ordinance seeks to encourage the permanent protection of farmland from non-agricultural development. This preservation ensures the long-term viability of the agricultural industry, promotes local food production, and maintains the rural landscape that is vital to the Township's identity and heritage.
2. **Conservation of Natural Resources.** Another crucial purpose of the PDR program is to conserve valuable natural resources and ecosystems. The ordinance aims to identify and protect environmentally sensitive areas, such as wetlands, forests, and wildlife habitats, by acquiring development rights from landowners. This conservation effort contributes to maintaining biodiversity, preserving water quality, and supporting the overall health and resilience of local ecosystems.
3. **Scenic and Cultural Preservation.** The PDR ordinance recognizes the importance of scenic beauty and cultural heritage in Marion Township. It aims to protect scenic vistas, historic sites, and cultural landscapes that contribute to the aesthetic appeal and tourism potential of the area.
4. **Voluntary Participation and Landowner Benefits.** The intent of the PDR program is to offer voluntary participation for landowners who wish to conserve their land. The ordinance provides landowners with financial compensation in exchange for the purchase of development rights, allowing them to retain ownership while restricting future non-agricultural development. This approach provides landowners with economic benefits, financial security, and the opportunity to maintain their agricultural operations or preserve the natural character of their property.
5. **Community Collaboration and Planning.** The PDR ordinance encourages community collaboration and engagement in land use planning. It aims to involve stakeholders, including landowners, residents, agricultural organizations, and environmental groups, in the development and implementation of the program. By fostering partnerships and leveraging local knowledge, the ordinance ensures that the PDR program aligns with community goals and values.

Section 1.2 Short Title

This ordinance shall be known and may be cited and referred to as the "Marion Township Purchase of Development Rights" General Ordinance No. 23-01 and shall hereinafter be referred to as

"Purchase of Development Rights" ordinance.

ARTICLE II: SCOPE AND APPLICATION

Section 2.1 Interpretation

The terms and provisions of this ordinance shall be interpreted and applied as minimum standards and requirements for the promotion and protection of the public health, safety, and welfare, and for the public peace and preservation of natural resources and public and private property within the township.

Section 2.2 Logic

This article has been created to provide for the establishment, financing, and administration of a purchase of development rights program to protect farmland, open space, natural areas, and other areas of eligible land as defined herein, in accordance with Public Act 110 of 2006, as amended.

Section 2.3 Acquisition

The acquisition of interests in farmland as provided in this Ordinance is a public purpose of Marion Township as provided in this Ordinance and financing such acquisition requires that the Township enter purchases or installment purchases not to exceed statutory limits.

ARTICLE III: DEFINITIONS

For construction and application of this ordinance, the following definitions shall apply:

Agricultural Rights: An interest in and the right to use and possess land for purposes and activities related to open space, natural habitat, horticultural and other agricultural uses.

Agricultural Use: Land substantially undeveloped and devoted to the production of plants and animals useful to humans, including fruits, nuts, vegetables, greenhouse plants, Christmas trees and lumber, forages and sod crops, grains and feed crops, dairy and dairy products, livestock (including breeding and grazing), poultry and other similar uses and activities.

Board of Trustees: The Marion Township Board of Trustees.

Conservation Value: The agricultural, natural, open space, scientific, biological, and ecological values of a parcel of property that are found to be worthy of protection.

Development: An activity that materially alters or affects the existing conditions or use of any land.

Development Rights: The right to develop land to the maximum intensity of development authorized by law.

Development Rights Easement: A grant, by a legal instrument, whereby an owner relinquishes to the public the right to develop the land except as expressly reserved in the instrument, and which contains a covenant running with the land describing the easement terms, conditions, and development rights.

Full Ownership: Fee simple ownership, or outright ownership of real property, including the ownership of all aspects of title, including the ability to transfer the totality of the title.

Intensity of Development: The height, bulk, area, density, setback, use and other similar characteristics of development.

Other Eligible Land: Land that has a common property line with agricultural land from which development rights have been purchased and that is not divided from the agricultural land.

Owner: The party or parties who has/have legal title to or an equitable interest in the property.

Land: A measure portion of land that is described and included in a proposed agreement to acquire or transfer the purchase of development rights between the Township and owner of the land, in accordance with the provisions of this ordinance.

Permitted Use: Any use reserved within a development rights easement essential to the farming operation thereon or which does not alter the open space character of the land.

Value of Development Rights: The purchase price of the development rights shall be equal to or less than the appraised potential value of the land if fully developed less the current appraised value of the agricultural or open space land.

Historical Structure: Any building or structure listed by the Michigan State Historical Society on the Michigan State and National Register of Historic Places. Historical structure can also include a building or structure that the Township has designated under an enactment as having historical or architectural significance to the Township and its residents.

ARTICLE IV: ELIGIBILITY, APPLICATION, AND REQUIRED INFORMATION

Lands that may be considered for purchase of development rights shall exhibit at least one of the following characteristics:

1. Are currently used for agricultural and farming or have been used for such uses in the past and may immediately be returned to active agricultural and farming use.
2. Contain woodland, trees, tree stands or wooded habitat.
3. Contain wetland.
4. Contain 100-year floodplain, natural watercourse, lake or pond, or shoreline of a lake or pond.
5. Are currently open and void of all manmade structures such as dwellings, barns, garages, sheds, buildings, paved or unpaved roads or drives, and debris. Lands which contained such structures in the past may be eligible but only if all such structures have been removed prior to consideration and the land is open and void at the time of consideration. A special exception can be made by the Township Board, upon the recommendation of the Supervisor and planner, and the Planning Commission, to consider land which contains historic structures that have significance to the township overall. Historic structures include, but are not limited to, country school house, early government building, country church, a historical barn, a historical family farm house, Centennial Family Farm. The ongoing maintenance of these historic structures will be negotiated between the Township and the owner of the land and historic structure.

ARTICLE V: APPLICATION

Section 5.1 Application

Any person may apply to the township for purchase of the development rights of his/her/their land. A person may apply by providing a request in writing accompanied by the required information as set forth herein. Application forms may be provided by the township and shall be used if available. Any application and review fees as required by resolution by the Township Board shall be paid at the time of application. The act of filing an application provides no

assurance of approval and subsequent purchase of development rights.

1. The township may initiate the purchase of development rights by directing the Township Supervisor and township planner to explore the possibility of purchasing the development rights from a specific parcel. Such exploration shall include identification of the property owner, determining the owner's willingness to work with the township, and conducting an informal evaluation as to whether the property could be eligible and could meet the standards herein. If the exploration work finds that purchase of the development rights is possible, the Township Supervisor shall prepare or make arrangements for the preparation of a complete application as set forth herein. The township is not obligated to further pursue a self-initiated application, nor is the township obligated to approve or subsequently purchase the development rights.

Section 5.2 Required Application Information Submitted by Owner for Consideration

The following information is necessary and shall be provided for review by an applicant when considering any land for purchase of development rights.

1. Parcel identification number, legal description, and parcel size.
2. Copy of the title and deed for the property, along with a completed title search, less than 30 days old, confirming rightful ownership of the property.
3. Identification of all rights-of-way or easements on the property, and any party with an interest in the property are disclosed.
4. Statement from the County Treasurer and Township Treasurer that all taxes and fees are paid current.
5. Property value data including assessed value and estimated market value.
6. Existing land use on an adjacent to the parcel.
7. Identification of the significant natural features (wetlands, woodlands, trees, ponds, streams, rivers, habitat containing endangered or threatened species or species of special concern, etc.)
8. Identification of known environmental concerns on the property (e.g., evidence of buried waste, soil contamination, ground, or surface water contamination, etc.)
9. Survey of property by Michigan registered surveyor, less than one year old, indicating parcel boundaries, location of buildings, walls, shelters, fences, bridges, trails, roads, and other built features.
10. Proposed types of development rights to be purchased (e.g., fee ownership, undivided interest, conservation restriction, retained life estate, reversionary interest.
11. Description of any rights the owner wishes to retain. Identification and explanation of mineral, oil and gas, or water rights that may exist.
12. A current statement that any mortgage or lien that appears in the title search shows the balance of the debt and confirms all payments on said mortgage or lien are up to date.

Section 5.3 Authorization

The Township Board may purchase the development rights of land from willing property owners in Marion Township that is or was an active agricultural operation, open space, or natural areas as defined herein

as intended by this article. The property interest acquired may be either the development rights, or any lesser interest, easement, covenant, or other contractual right. Purchase of development rights under this article may not be accomplished through condemnation. Participation in this program by a landowner shall be voluntary; the township shall have no authority to force a landowner to participate.

1. The Township Board is further authorized to participate, partner or contract with public, private, or nonprofit land conservation organizations or trusts to purchase, administer and enforce the rights obtained by the township under the PDR program.
2. If the property is subject to mortgages or other liens, the mortgage or lien holders must willingly cooperate in the transaction.

ARTICLE VI: REVIEW PROCEDURES

Section 6.1 Preliminary Review and Recommendation

It shall be the responsibility of the Township Supervisor and township planner to determine whether an application is complete. For complete applications, the Township Supervisor and planner shall prepare a written report to the Planning Commission describing the case and provide a recommendation regarding the following:

1. Whether to purchase development rights.
2. Description of the development rights to be purchased. A description of any future property developments, improvements, and maintenance if any that will be permitted after the development rights have been purchased by the Township.
3. The price at which development rights will be purchased and the method of payment.
4. A detailed accounting of funds to be used for the purchase of the development rights indicating the source(s) of the funds for the purchase (millage, donation, general fund, grant, etc.)
5. The procedures and legal documents to be used for ensuring that the purchase or sale of the development rights is designed to run with the land.
6. In preparing their report, the Township Supervisor and planner may consult with any other staff, consultants, agencies, and experts that may be necessary.
7. A summary of all documents and correspondence that may pertain to said purchase.
8. A summary of all unique agreements or documents that were part of the negotiations of the sale.

Section 6.2 Attorney Review, Comment, and Recommendation

The Attorney should prepare specific draft documents after the Board of Trustees review and recommendation, but before the Public Hearing for the public to review and speak upon. Draft documents would include the Purchase Agreement for the PDR, the final PDR Agreement for recording, and any agreement for installment purchase.

Section 6.3 Planning Commission Review and Recommendation

The Planning Commission shall review and completed application and written reports provided by the Township Supervisor and planner. Upon completing its review, the Planning Commission shall make a

recommendation to the Township Board based upon its findings and the requirements and standards in this article, as well as the goals, policies and objectives of the township expressed in the Master Plan and adopted ordinances. A public hearing shall be called by the Planning Commission, in which case the hearing shall be noticed in accordance with the procedures set forth in the MZEA. The Planning Commission's recommendation shall be made only after the public hearing has been held. The Planning Commission shall recommend that the Township Board purchase or not purchase the development rights. Comment regarding the financing mechanism to purchase the development rights if recommended shall also be included.

Section 6.4 Township Board of Trustees Review and Action

The Township Board shall review the application (which may be provided to the board in summary), written reports (which may be provided to the board in summary), and Planning Commission recommendation. Upon completing its review, the Township Board shall decide whether to purchase the development rights of the property under consideration or not and shall decide on the financing mechanism with which to purchase the development rights if the decision is to purchase. The decision of the Township Board is discretionary; the findings and recommendation by the Supervisor, Attorney, Planner, and the Planning Commission shall not obligate the Township Board to purchase or not purchase development rights.

ARTICLE VII: APPROVAL AND CONDITIONS

Section 7.1 Standards for Approval

When considering the purchase of development rights under the procedures set forth in this article, the following standards shall be followed for approving, modifying, or rejecting an application to purchase development rights:

1. **Eligible Lands:** Only those parcels of land that meet or exceed the eligibility criteria as set forth in this article may be considered for purchase of development rights.
2. **Eligible Rights:** The township shall only purchase the rights up to develop the land to the highest assessed and best use opportunity.
3. **Purchase Methodology:** The purchase price of the development rights shall be equal to or less than the appraised potential value of the land if fully developed less the current appraised value of the agricultural or open space land. The purchase price shall take into account township responsibilities to the land assessed by the township and gas, oil and mineral rights over by a 3rd party. The method of payment shall be determined in advance of the purchase of development rights. Any approvals or procedural requirements related to the method of payment must be secured separately and prior to the purchase of the development rights or made a condition to the approval thereof.
4. **Conformance with PDR Concept:** The purchase of the development rights being considered shall be consistent with and promote the intent of the purchase of development rights concept as stated in this ordinance. The purchase shall also be consistent with the specific standards and requirements set forth herein.
5. **Compatibility with Township Master Plan:** The purchase of the development rights being considered shall be compatible with the general principals, goals, objectives, and policies set forth in the adopted master plan.
6. **Farmland Preservation, Open Space, and Natural Resource Preservation:** The purchase of the development rights shall accomplish one or more of the following:

- a. Preservation of farmland from being development with another use, enabling land to continue in agricultural or farm use.
 - b. Preservation of open space for the visual, scenic, active recreation, or passive recreation enjoyment of township residents.
 - c. Preservation of a natural area to further the possibility of natural vegetative growth, wildlife habitat, and restoration of that natural area in the future.
7. **Purchase Agreement:** All applications shall abide by the following:
- a. Purchase Agreement: The purchase of the development rights shall be accomplished by a purchase agreement, or other equivalent instrument, that fixes the transaction to run with the land and is recorded with the Register of Deeds.
 - b. Conformance to all applicable regulations. The application shall be made, and the purchase of development rights shall be carried out, in conformance with all applicable federal, state, and local laws and regulations.
 - c. Conditions of Approval: Any purchase of development rights made through this purchase of development rights program shall be set forth in a written agreement that is in recordable form. The purchase agreement shall specify the conditions of approval, including the following, at minimum:
 - 1) Runs with the land. The purchase agreement shall state that the conveyance of the development rights shall run with the land.
 - 2) Rights Retained by Owner. The purchase agreement shall state the provisions by the owner to retain certain rights, including a detailed description of the retained rights, the right to convey the retained rights, and maintaining existing structures.
 - 3) Submittal of a title insurance policy.
 - 4) Environmental report acceptable to the township.
8. **Prohibited Activities:** Any activity on or use of the property that is inconsistent with the purposes of this article or detrimental to the values being preserved is prohibited. By way of example, the following activities and uses are prohibited:
- a. Any division or subdivision of the property.
 - b. Commercial or industrial use (for purposes of this provision, farming and agricultural use shall not be considered commercial or industrial.)
 - c. Placement or construction of any buildings, structures, fences, walls, roads, parking lots or other improvements, unless expressly permitted.
 - d. Cutting down trees or vegetation, unless expressly permitted.
 - e. Mining or alteration of the land surface, except where mineral rights have been retained by another owner and where the other owner has explicit rights to mine on the property as previously disclosed in the application review process.
 - f. Dumping of hazardous, construction, household, equipment, mechanical waste or materials.

- g. Alteration to natural watercourses, wetlands, or other natural water features.
- h. Use of motorized off-road vehicles such as snowmobiles, all-terrain vehicles, motorcycles, and the like are to be operated by the land owners only for the purpose of farming and/or maintaining the preserved property.
- i. Construction of billboards or other advertising signs, and other signs as defined in Section 15.03.

ARTICLE VIII: ENFORCEMENT AND MONITORING

Section 8.1 Monitoring and Enforcement

The purchase agreement shall provide the township or its agent with certain rights needed to monitor the protection of the rights purchased. These rights shall include:

1. The right to enter the property at least annually providing 48-hour notice of such visit and at reasonable times to monitor or enforce compliance with the conditions of approval and the purchase agreement. The township, however, shall not unreasonably interfere with the owner's retained rights on the property.
2. The right to prevent any activity or use of the property that is inconsistent with the conditions of approval and the purchase agreement.
3. The right to require restoration of the areas or features of the property that are damaged by activity inconsistent with the conditions of approval and the purchase agreement. The township or its agent shall also have the right to conduct studies on the property to determine appropriate types of restoration activities if necessary.
4. The right to place signs on the property to indicate that the property is being protected under the terms of this PDR program.

Section 8.2 Further Action

In addition to, or in lieu of, seeking to enforce this ordinance by proceeding under Section 8.1 above, the township may institute an appropriate action in a court of general jurisdiction seeking equitable relief.

ARTICLE IX: ENHANCEMENT

The purchase agreement may provide the township with the right to engage in activities that restore the biological and ecological integrity of the property. Such activities may include inventorying plant and animal species on the property, planting native vegetation, removal of undesirable vegetation, etc.

ARTICLE X: DURATION OF ACQUIRED INTERESTS

It is the intent that the development rights acquired pursuant to this Ordinance shall be held in trust by the Township for the benefit of its citizens in perpetuity.

ARTICLE XI: FINANCING

Section 11.1 Procedure

The Township Board of Trustees shall finance the PDR program through one or more of the sources identified in Section 509(1) of Public Act 110 of 2006, as amended, including: General appropriations by the Township; proceeds from the sale of development rights by the township subject to Section 508(3) of Public Act 110 of 2006, as amended; grants; donations; millage; bonds or notes issued under Sections 509(2)-(5); general fund revenue; special assessments under Section 509(6); and other sources approved by the legislative body and permitted by law. If the purchase includes an installment purchase, the Township shall comply with Act 99 of 1933.

The Township Board of Trustees shall create a Development Rights Acquisition Fund to be hereafter created in the office of the Treasurer of Marion Township. Any funds secured by the Township for purchasing development rights on farmland or open space shall be placed in the designated Development Rights Acquisition Fund. Money in such an acquisition fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Township money. The funds and any interest received from the deposit or investment of such funds shall be applied and used solely for the purposes of purchasing development rights of land in the Township set forth in this Ordinance.

Section 11.2 Related Costs

The costs of appraisal, environmental assessment, title search, easement development, baseline documentation, legal and other services lawfully incurred incident to the acquisition of interests in eligible lands by the Township shall be paid by the Township. The Township shall not be responsible for expenses incurred by the owner incidental to this transaction.

Section 11.3 Supplemental Funds

Supplemental or matching funds from other governmental agencies or private sources may become available to pay a portion of the cost of acquiring development rights, or some lesser interest in eligible lands or to supplement or enlarge such acquisition. The Board of Trustees is hereby authorized to utilize such funds to purchase interests in eligible lands or to otherwise supplement Township funds in the manner provided by this Ordinance and in accordance with the applicable laws or terms governing such grant.

ARTICLE XII: SEVERABILITY

If any one or more sections, provisions, phrases, or words of this ordinance shall be found to be invalid by a court of competent jurisdiction, such holding shall not affect the validity nor the enforceability of the remaining sections, provisions, phrases, or words of this ordinance unless expressly so determined by the court.

ARTICLE XIII: NONEXCLUSIVITY

The prohibitions provided for in this ordinance shall be in addition to, and not exclusive of, other prohibitions and penalties provided for by other law, ordinance, rule and/or regulation.

ARTICLE XIV: ADOPTION

Provision of this ordinance shall take effect thirty (30) days from the date of publication in accordance with the statutes of the State of Michigan.

The ordinance was unanimously adopted by the Township Board on October 12, 2023, as verified by Tammy Beal, Marion Township Clerk.

Date Adopted by Township Board:	October 12, 2023
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