

## ORDINANCE NO. 333

OF HEARINGS RELATING TO ZONING AND LAND USE MATTERS BEFORE BOTH THE PLANNING COMMISSION AND THE CITY COUNCIL; FIXING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

The city of Bay City ordains as follows:

Section 1. These rules shall govern the conduct of hearings held by the planning commission and city council pursuant to the zoning ordinance adopted July 13, 1973, and any amendments thereto, including all hearings relating to zone changes, conditional use permits, variances, amendments to the code and appeals from the planning commission to the city council. Any other matters coming before the planning commission or council may be governed by any or all of these rules at the discretion of the hearing body.

Section 2. The presiding officer (chairman of the planning commission, or mayor or acting official. of the city) shall call the hearing to order at the appointed time and place and clearly state the purpose of the hearing, the issues to be heard and the procedures to be followed.

Section 3. The order of procedure shall be as follows: The presiding officer shall announce the nature and purpose of the hearing; a statement of background facts shall be given by either the presiding officer or a staff member; the applicant/proponent shall first be heard and persons in favor of proponent's proposal shall next be heard; opponent, upon recognition by the presiding officer, may submit questions directly to the proponent; opponents of the proposal shall then be heard, subject to questioning by the proponent after recognition by the presiding officer; representatives of any city, county, state or other public agency shall then be allowed to testify, subject to cross-examination by both the proponents and opponents of the proposal after recognition by the presiding officer; the presiding officer shall have the right to restrict such cross-examination upon any reasonable basis, time, number of questions or questioners and so forth. Lastly, the proponent shall be allowed to offer rebuttal testimony and evidence; the presiding officer shall then conclude the hearing and the commission or council shall deliberate the proposal. The commission or council shall either make its

decision and state its findings, which may incorporate findings proposed by the proponent, opponent, the staff or the planning commission, or may continue its deliberation to a subsequent meeting, the time and place of which must then be announced. The subsequent meeting shall be for the purpose of continued deliberation and shall not allow for additional submission of testimony, except upon decision of the council.

Section 4. Witnesses and time limitation: To the extent practicable, and depending upon the nature of the matter being heard, the presiding officer should declare an equal time limitation applicable to each side of the issue and requiring adherence to such limitations.

(a) No proponent or opponent shall speak more than once without first obtaining permission from the presiding officer at the first available opportunity.

(b) No person shall be disorderly, abusive or disruptive of the orderly conduct of the hearing.

(c) No person shall testify without first receiving recognition from the presiding officer and stating his full name and residence address.

(d) No person shall present irrelevant, immaterial or unduly repetitious testimony or evidence; provided, however, that reports and documents prepared by the city of Bay City personnel shall be deemed relevant, material and competent unless objected to by any interested party with good cause and at the first available opportunity.

(e) There shall be no audience demonstrations, such as applause, cheering, display of signs, or other conduct disruptive of the hearing.

(f) All testimony given by witnesses shall avoid being of a personal nature.

Section 5. Any exhibit intended to become part of the record, whether offered by a proponent, opponent or the city, should be identified by suitable mark and numbered in the order as presented, and should be available for examination or cross-examination by any of the parties during the hearing. Upon conclusion of the hearing or continuance thereof, all such documents should be delivered to the custody of the secretary of the planning commission or to the city recorder or other clerk of the hearing for preservation as part of the record of the proceedings.

Section 6. The presiding officer, council members and, with the approval of the presiding officer, the city attorney and any other officer or employee of the city, may question and cross-examine any person who testifies. Such cross-examination shall be permitted at the time such evidence is adduced. Argumentative questions and commentaries by cross-examiners should be strictly controlled, and all questions and answers should be restricted to the relevant issues.

Section 7. No officer or employee of the city who has a financial or other private interest shall participate in discussion with or give an official opinion to the council on the proposal without first declaring for the record the nature and extent of such interest.

Section 8. The general public has a right to have councilmen free from pre-hearing contacts on matters heard by them. It is recognized that a countervailing public right is free access to public officials on any matter. Therefore, councilmen shall reveal any significant pre-hearing or ex parte contacts with regard to any matter at the commencement of the public hearing on the matter. If such contacts have impaired his impartiality or his ability to vote on the matter, he shall so state and shall abstain therefrom.

Section 9. The mayor shall be the presiding officer at all hearings. In his absence or with his consent, the council may designate one of its members or any other officer, employee or person to act as presiding officer at a hearing. A presiding officer, if not a councilman, shall have no vote on the question in determination of the matter.

(a) The presiding officer shall have authority to:

1. Regulate the course and decorum of the hearing.
2. Dispose of procedural requests or similar matters.
3. Rule on offers of proof and relevancy of evidence and testimony.
4. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentations, cross-examination of witnesses and rebuttal testimony.
5. Take such other action authorized by the council appropriate for conduct commensurate with the nature of the hearing.

#### Section 10.

(1) The city recorder, or a designee of the presiding officer, shall be present at each hearing and shall cause the proceedings to be stenographically or electronically recorded. It shall not be necessary to transcribe testimony unless required for judicial review or unless ordered by the council.

(2) The council may take official notice of the following:

(a) All facts which are judicially noticeable; and

(b) The charter, ordinances, resolutions, rules, regulations and official policies (if written) of the city of Bay City.

(3) Matters officially noticed need not be established by evidence, and may be considered by the council in the determination of the proposal.

(4) Any member of the public shall have access to the record of the proceedings at reasonable times, places and circumstances. Any member of the public shall be entitled to make copies of the record at his own expense.

(5) These rules are supplementary to any rules of procedure previously adopted by the council, either by ordinance or resolution, for the conduct of council meetings; provided, however, these rules shall control where there are conflicting provisions.

#### Section 11.

(1) The burden of proof is upon the proponent. The more drastic the change or the greater the proposal or the greater the impact of the proposal in an area, the greater is the burden upon the proponent.

(2) The requested proposal must be supported by proof that:

(a) It conforms to all applicable city charter and ordinance requirements.

(b) There is a public need for the approval.

(c) The public need will be best served by granting the proposal (if the proposal is for zone change, proof must be submitted that the public need will be best served by changing the classification of the particular piece of property in question as compared with other available property).

(d) If other areas have been previously designated for a use of development submitted in the proposal, there is a necessity for introducing the proposal into an area not previously contemplated and that the property owners there should bear the burden, if any, of introducing that proposal into their area.

Section 12. The following factors shall be taken into consideration by the commission or council in reaching their decision on a proposal:

- (a) The character of the district.
- (b) The peculiar suitability of the property for the particular use or uses.
- (c) The conservation of property values.
- (d) The direction of building development

The foregoing factors are not exclusive, but other reasons may be found and set forth in the record, and they must be in conformity with the comprehensive plan and consistent with the overall objectives of the comprehensive plan.

Section 13. Inasmuch as procedures with respect to the conduct of public hearing have not heretofore been prescribed by the City Council and it is necessary for the peace, health and safety of the people of the City of Bay City that the foregoing outline be adopted with the least possible delay to assure orderly proceedings in accordance with legal requirements, an emergency is hereby declared to exist and this ordinance shall become effective upon its adoption by the Council and approval by the Mayor.

Passed and adopted by the Common Council this 4th day of October, 1973. Approved by the Mayor this 4th day of October, 1973.

/s/ Albert Griffin  
Mayor

ATTEST:

/s/ E.M. Crossley  
E.M. Crossley, City Recorder