

ARTICLE XXIX

PROHIBITION AGAINST ANTI COMPETITIVE NEGATIVE USE RESTRICTIONS

Section 29.1 Purpose.

The purpose of this Ordinance is to prohibit establishment of negative use restrictions on property within the C-1, C-2, C-3, C-4, C-5, R-R and M-1 Zoning Districts. This Ordinance is intended to encourage commercial competition, promote the marketability of property, reduce the probability of blight and unoccupied commercial space, and promote the health, safety and welfare of the residents of the City. It is not intended to regulate restrictions on residential properties within these zoning districts that promote attainable housing or conservation easements as provided for by 765 ILCS 120/1 et seq.

Section 29.2 Definition.

"Negative Use Restriction shall not be interpreted to include: 1) provisions in a lease, purchase and sale agreement, declaration of restrictive covenants and conditions, condominium declaration, or other instrument, for a multi-tenant building including but not limited to a shopping center, a strip shopping center, or an outlot located within a shopping center (hereinafter collectively a "Commercial Structure"), in which a developer, landlord, owner and/or condominium or property owner association agrees with an owner, tenant, and/or purchaser (a "Benefitted Party") of a lot, unit, or space (hereinafter a "Unit") within said Commercial Structure, to grant the exclusive use of certain uses or types of uses ("Protected Uses") in a Unit within said Commercial Structure while prohibiting said Protected Uses in another Unit within said Commercial Structure, although said provisions shall become unenforceable in the event the Benefitted Party no longer uses the Benefitted Party's Unit for one or more Protected Uses, and a) the Benefitted Party does not use other space in an area substantially contiguous to the zoning district in which the Commercial Structure is located for one or more Protected Uses, or b) the Benefitted Party's Unit is not used by the Benefitted Party's grantees, successors, or assigns for one or more Protected Uses within eighteen (18) months of the date the Benefitted Party discontinues its use of the Benefitted Party's Unit for one or more of the Protected Uses; 2) restrictions imposed on residential properties within the identified zoning districts that are intended to promote attainable housing; or 3) qualified conservation easements as provided for by 765 ILCS 120/1 et seq."

Section 29.3 Negative Use Restrictions Prohibited Against Public Policy.

Any Negative Use Restriction imposed on real property within the C-1, C-2, C-3, C-4, C-5, R-R, or M-1 Zoning Districts shall be void and unenforceable unless the City Zoning Administrator determines that the following factors are present and undertakes the following action:

- A. The person or entity proposing a negative use restriction is substituting a use substantially similar or identical to the use which is or was on the property for which the negative use restriction is proposed and the proposed substitute use is within the geographic area bounded by the zoning district in which the property proposed for the negative use restriction is located or an area substantially contiguous to that geographic area which is zoned to allow the substitute use; and
- B. The owner has submitted plans required by the City's Zoning Administrator, subdivision regulations, and building ordinances for the construction of the substitute use; and
- C. It is reasonable to conclude that the substitute use shall commence operations within eighteen (18) months of the discontinuance of the use on the existing property for which the negative use restriction is proposed; and
- D. Issues a written certificate certifying that the owner or operator has established the conditions to permit the document containing the negative use restriction which shall be recorded by the City Clerk at the Recorder of Deeds at the owner or operator's expense.

Section 29.4 Appeal of Denial of Written Certificate.

Any denial by the Zoning Administrator of a written certificate authorizing a negative use restriction may be appealed to the Corporate Authorities of the City who may grant the certificate upon a finding that the applicant has satisfied the requirements of subsections A-C of Section 29.3 of this Ordinance.

Section 29.5 Failure to Complete the Substitute Use.

If the owner/operator of the substitute use has not secured an occupancy permit within eighteen (18) months of the date of issuance by the Zoning Administrator or Corporate Authorities of a certificate authorizing a negative use restriction the Zoning Administrator shall withdraw the certificate allowing the negative use and record the withdrawal with the Recorder of Deeds. The eighteen months time period may be extended for up to twenty-four (24) months by the Corporate Authorities of the City upon good cause shown.

Section 29.6 Maximum Length of Authorized Negative Use Restriction.

No negative use restriction authorized pursuant to section 29.3 of this Ordinance shall be valid for a period longer than 10 years from the date of issuance of the certificate of the City Zoning Administrator or Corporate Authorities authorizing the negative use.

Section 29.7 Penalties.

Each day, starting from the date of any agreement, deed or other document establishing a negative use restriction, prohibited by this Ordinance, whether recorded or not recorded, shall constitute a separate offense subject to the imposition of a fine not less than \$250.00 nor more than \$1,000.00 per day for each day the violation continues to exist. For recorded negative use restrictions in violation of this Ordinance, a violation shall only abate upon the recording of a document fully abrogating the negative use restriction. For non-recorded use restrictions the violation shall abate on the date that the owner/operator files with the City's Zoning Administrator a document fully abrogating the negative use restriction.