

PENINSULA TOWNSHIP
PURCHASE OF DEVELOPMENT RIGHTS

ORDINANCE #23

Approved by Peninsula Township Board May 4, 1994

Revised August 25, 2003 amending Section 8 to provide a process for amending easements and adding Section 14 Severability.

Revised February 28, 2017 amending Section 6(4) regarding Committee termination.

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ORDINANCE NO.23

AN ORDINANCE relating to the acquisition of voluntarily offered interests in Farmland and Open Space Land in Peninsula Township: calling an election by the voters of the Township on August 2, 1994, to authorize the cash purchase and/or installment purchase contracts under Act 99 of 1933 and for the purpose of providing funds for such acquisition. The principal and interest on such contracts shall be payable out of annual tax levies to be made upon all of the taxable property within the Township in excess of constitutional and statutory limits and from any other money which may become legally available and used for such purposes.

BE IT ORDAINED BY THE PENINSULA TOWNSHIP BOARD:

SECTION 1 Findings and Declaration of Purpose

The Township Board finds that:

(1) Peninsula Township is a desirable place to live and visit because of its panoramic views of agricultural acreage interspersed with stands of trees, open fields and rolling terrain. The framing of many of these views with the sight of clean, open bay waters creates a spectacularly spacious effect. The views, agriculture and open spaces, woodlands, wetlands and dark night sky are all considered valuable natural and aesthetic resources which should be protected.

(2) The climate, significant changes in elevation and proximity to water make this a unique area where certain crops can be grown as well as or better than anywhere else. These resources not only include more than seven thousand acres of land suitable for farming they also include other woodland, wetlands and open lands adjacent to these farmlands. Such lands provide unique, aesthetic and economic benefits to the citizens of the Township and are an important part of the Township's heritage. However, Peninsula Township is experiencing substantial development pressure because of its location adjacent to Traverse City. The same characteristics which have made this area so desirable for fruit production also make it attractive for residential sites.

(3) The agricultural industry in Peninsula Township provides the opportunity to harvest locally grown fruit and vegetables to sell at roadside stands and other local outlets in the Township. Land suitable for farming is an irreplaceable natural resource with soil and topographic characteristics that have been enhanced by generations of agricultural use. When such land is converted to residential or other urban uses which do not require those special characteristics, an important community resource is permanently lost to the citizens of Peninsula Township.

(4) It is the policy of the State of Michigan and Peninsula Township to protect, preserve and enhance agricultural and open space lands as evidenced by the Peninsula Township Comprehensive Plan including open space policies, the Farmland and Open Space Preservation Act of 1974 (P. A. 116), the Historic and Conservation Easement Act and the Township Ordinances regulating land use by zoning and subdivision control. However, these policies and regulations, by themselves, have not been effective in providing long-term protection of farmland, shoreline and open space lands under the pressure of increasing urban development.

(5) Agriculture on Old Mission Peninsula is predominantly fruit production; the majority of the nation's tart cherries are grown within this region. Of the 17,000 acres of land in Peninsula Township, there are currently 12,000 acres in the Agricultural District of which some 7,000 acres provide the basis for the township's currently active agricultural enterprises.

(6) Generally, Farmland and Open Space Lands which are close to urban centers have a greater market value for future urban development than their market value for farming or open space, and prime fruit land has the same features of high elevations and proximity to water that are components of desirable residential areas. This fact encourages the speculative purchase of these lands at high prices for future development, regardless of the current zoning of such lands. Farmland which has a market value greater than its agricultural value does not attract sustained agricultural investment and eventually this land is sold by farmers and removed from agricultural uses.

(7) The permanent acquisition by the Township of voluntarily offered interests in Farmland and Open Space Lands within the Township, as provided in this Ordinance and as authorized by the Constitution and statutes of the State of Michigan, will permit these lands to remain in farmland and open space in a developing urban area and provide long-term protection for the public interests which are served by Farmlands and Open Space Lands within the Township.

(8) Properties on which the Township has purchased the Development Rights should remain substantially undeveloped in order to promote their "Agricultural Use".

(9) The acquisition of interests in Farmland and Open Space Lands as provided in this Ordinance is a public purpose of Peninsula Township and financing such acquisition requires that the Township enter into purchases or installment purchases not to exceed statutory limits.

SECTION 2 Definitions

(1) "Agricultural Use" means substantially undeveloped land devoted to the production of plants and animals useful to man, including fruits; grapes; nuts; vegetables; green house plants; Christmas trees; forages and sod crops; grains and feed crops; dairy and dairy products; livestock, including breeding and grazing; and other similar uses and activities.

(2) "Agricultural Rights" means an interest in and the right to use and possess land for purposes and activities related to open space, horticultural and other agricultural uses.

(3) "Appendix A" of this Ordinance means the maps which describe designated areas of Eligible Lands for purposes of priority of acquisition as provided in this Ordinance. Official large scale maps describing such areas in detail are hereby filed with the Peninsula Township Clerk and incorporated herein by this reference. Smaller scale maps generally illustrating such areas are appended to this Ordinance for more readily accessible public reference.

(4) "Chairperson" means the member of the Selection Committee who is elected Chairperson by the Selection Committee.

(5) "Development" means an activity which materially alters or affects the existing conditions or use of any land.

(6) "Development Rights" means an interest in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to agriculture and open space.

(7) "Development Rights Easement" means a grant, by an instrument, whereby the owner relinquishes to the public in perpetuity, the right to develop the land as may be expressly reserved in the instrument, and which contains a covenant running with the land, not to develop, except as this right is expressly reserved in the instrument.

(8) "Eligible Land" means Farmland and Open Space Land for which the purchase of "Development Rights Easements" with tax funds are authorized pursuant to this Ordinance.

(9) "Farmland and Open Space Land" means those lands shown in the Township Master Plan as an Agricultural Preserve Area as adopted and amended from time to time by the Peninsula Township Planning Commission.

(10) "Full Ownership" means fee simple ownership.

(11) "Governmental Agency" means the United States or any agency thereof, the State of Michigan or any agency thereof, any Township, City or municipal corporation.

(12) "Owner" means the party or parties having the fee simple interest, a real estate contract vendor's or vendee's interest, or a mortgagor's or mortgagee's interest in land.

(13) "Parcel" means contiguous property under one ownership that is included in an application.

(14) "Permitted Use" means any use contained within a development rights easement essential to the farming operation or which does not alter the open space character of the land.

(15) "Selection Committee" means the Committee formed pursuant to Section 6 of this Ordinance to advise the Township Board in the selection of Eligible Lands for purchase.

(16) "Substantially Undeveloped Land" means land on which there is no more than 1 residential dwelling unit (exclusive of migrant housing units) for each 20 acres of land.

(17) "Supervisor" means the Peninsula Township Supervisor.

(18) "Township Board" means the Peninsula Township Board.

(19) "Value of Development Rights" means the difference between the fair market value of Full Ownership of the land (excluding the buildings thereon) and the fair market value of the Agricultural Rights plus any Residential Development Rights to be retained by the owner.

SECTION 3 Authorization

(1) The Township Board is hereby authorized to expend tax revenues to acquire property interests in the Farmlands and Open Space Lands described and prioritized in Section 5 of this Ordinance. The property interest acquired may be either the Development Rights, or any lesser interest, easement, covenant or other contractual right. Such acquisition may be accomplished by purchase, gift, grant, bequest, devise, covenant or contract but only at a price which is equal to or less than the appraised value determined as provided in this Ordinance. The collected tax revenues shall be used to acquire such property interests only upon application of the Owner and in a strictly voluntary manner.

(2) The Township is authorized to enter into cash purchase and/or installment purchase contracts consistent with applicable law. When installment purchases are made, the Township is authorized to pay interest on the declining unpaid principal balance at a legal rate of interest consistent with prevailing market conditions at the time of execution of the installment contract and adjusted for the tax-exempt status of such interest.

(3) The Township Board is further authorized to contract with other parties, for example American Farmland Trust, to participate jointly in the acquisition of interests in Eligible Lands.

(4) The Township shall contract with a recognized and legally established non-profit land conservancy or other experienced and qualified individual that would share in the process of negotiating easements and establishing both the baseline studies and the procedures for monitoring of any conservation easements acquired under this Ordinance and would be done in accordance with "The Standards and Practices Guidebook" issued in 1989 by the Land Trust Alliance.

(5) Interest which the Township owns in property other than Eligible Lands may be exchanged for property interests in Eligible Lands on an equivalent appraised value basis. If the property interest exchanged is not exactly equal in appraised value, cash payments may be made to provide net equivalent value in the exchange.

(6) The Township Board shall budget on an annual basis for monitoring of all Development Rights Easements purchased under the authority of this Ordinance (Not to exceed \$1000.00 annually from General Fund Money).

SECTION 4 Retained Residential Development Rights

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

(2) It is 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.

(3) Applications for the sale of Development Rights may include a provision to retain the right to build residential dwellings (Residential Development Rights), provided, that no retained residential development rights would result in more than one dwelling unit per twenty (20) acres of land (exclusive of approved migrant housing units). This is not to preclude the sale of all the remaining Development Rights on a property that has existing dwelling units in excess of one dwelling unit per twenty acres of land.

(4) The building locations for retained Residential Development Rights may be restricted in the negotiated "Development Rights Easement" in order to protect Scenic Views identified in the Township Comprehensive Plan.

SECTION 5 Eligible Lands and Priority of Acquisition

The tax revenues shall be used to purchase property interests in the following lands in the following order of their priority subject to the provisions of Section 7.

Primary Criteria that all properties must meet:

Voluntary application by the property owner and included in the Agriculture Preservation Area Map adopted by the Peninsula Township Planning Commission as it may from time to time be amended.

Criteria for Selection Within Same Priority.

The following criteria shall be used in determining which offers to accept in the event that funds are not adequate in any Selection Round to purchase Development Rights on all Eligible Lands of equal priority for which valid offers have been received by the Township:

Cumulative Points

- 21-30 1. Parcel by class is shown on Prime Scenic View Map adopted by the Peninsula Township Planning Commission.
- a. Class I - (30)
 - b. Class II - (27)
 - c. Class III - (24)
 - d. Class IV - (21)
- 20-30 2. Parcels with percentages of green and/or yellow rated sites as shown on the Red Tart Cherry Site Inventory for Grand Traverse County published by the Soil Conservation Service.
- a. 90 % or more - (30)
 - b. 50% to 89.9% - (25)
 - c. 30% to 49.9% - (20)
- 10 3. Contiguous with other properties currently being farmed. Parcel which is
- 10 4. greater than 10 acres and is adjacent to agricultural lands that are permanently preserved or on which Development Rights have been offered for sale.
- 5 5. Parcels offered for development rights purchase that are 10 acres or more in size.
- 5 6. Parcels which are less than 10 acres in size and adjacent to agricultural lands that are permanently preserved or on which Development Rights have been offered for sale.

Up to 25 points for Physical Characteristics based on PROFESSIONALLY QUALIFIED site analysis to be used when other point totals are equal (Tie Breaker).

- (25) 7. Physical Characteristics
- a. Soil Factors
 - (1) Texture
 - 2 (a) Coarse loamy sand
 - 1 (b) Fine loamy sand
 - (2) Drainage
 - 2 (a) Well drained
 - 1 (b) Moderately well drained
 - (3) Depth/rooting restrictions
 - 2 (a) No restrictions to 48 inches
 - 1 (b) Coarse fragments

- b. Physiographic Factors
 - (1) Slope
 - 2 (a) 2-12%
 - 1 (b) 0-2%
 - (2) Elevation
 - 2 (a) Minimum 640 feet above sea level.
 - (3) Air Drainage
 - 2 (a) Uninterrupted airflow to major air storage basin.
 - 1 (b) Minor obstruction of air flow to major air storage basin.

SECTION 6 Selection Committee

(1) A seven-member Selection Committee shall be appointed by the Township Board within ninety (90) days following the approval of the Millage by the voters. The Selection Committee shall advise the Township Board in the selection of Eligible Lands on which Development Rights are offered for acquisition by their owners. Selection Committee recommendations for the selection of Eligible Lands shall be made by a majority of its members.

(2) The Selection Committee shall consist of residents and/or property owners of the Township chosen to provide equitable representation of geographical and agricultural interests. The Township Board may appoint ex-officio members.

(3) The Selection Committee may consult experts as it may desire and the Township Board may appropriate funds for that purpose.

(4) Members shall serve three-year terms, except that the initial term of three members shall be two years and terms of four members shall be three years. Members may be removed by the Township Board for good cause as determined by the Township Board. Members shall not be compensated for their services but shall be reimbursed for expenses actually incurred in the performance of their duties. Members may be reappointed to successive terms but the Selection Committee shall be terminated when the proceeds of the Millage vote have been spent.

(5) No member shall vote on the selection of individual parcels in which they have an interest or on individual parcels adjacent to property in which they have an interest.

SECTION 7 Selection

Beginning in the first year following the Millage election and continuing at least once a year until all proceeds of the Millage election have been expended, the Township Board shall conduct a voluntary property selection process (herein called "Selection Round") generally as follows:

(1) In each Selection Round the Development Rights on all Eligible Land properties offered shall be eligible for purchase. In all Selection Rounds properties of higher priority shall be purchased with available funds before properties of lower priority are purchased, provided:

- a. If the average appraised value per acre of Development Rights on a given parcel deviates by 30% or more from the median appraised value of all appraised properties, then the Township Board may renegotiate for a lower price and/or seek outside funding for the purchase of Development Rights on that parcel.
- b. In the interest of protecting a significant amount of agricultural land, the Township Board may determine not to buy all or any of the development rights on a particular parcel if the Board makes a finding that it is in the best

- interest of the program to protect a larger number of acres rather than a smaller number of acres of higher valued development rights.
- c. In the event that points are assigned to properties based on a view shed and the whole scenic view is not protected because either some of the properties in the view shed are not offered or an easement that protects the scenic view cannot be successfully negotiated, then the Selection Committee shall determine and remove those scenic view points from all parcels that might be obstructed by development on the non-protected parcel.
 - d. The selection committee shall remove points that were given because the property was adjacent to properties with offered development rights and those adjacent development rights are no longer offered.
 - e. The selection committee may receive and act on appeals of any factual nature by affected property owners, and any appeal may be reviewed by the Township Board.

(2) The Township Board shall begin each Selection Round by giving notice in one newspaper of general circulation in Peninsula Township. The notice shall describe the properties eligible for purchase in that Selection Round, the general procedure to be followed in the selection process, including an estimated time schedule for the steps in the process, and shall invite the Owners of such properties to make application for purchase of Development Rights by the Township and to describe the property interest which the Owner is willing to sell, such document shall include any residential development rights to be retained by the owner.

(3) Upon closing of the application period, the Selection Committee shall review each application which has been received to determine the eligibility and priority classification of each property interest and to verify ownership by title search. For properties located within a Prime Scenic View as shown on the Map adopted and as may from time to time be amended by the Peninsula Township Planning Commission as part of the Township Comprehensive Plan the Selection Committee shall request the Planning Commission to provide recommended building and/or vegetation restrictions as necessary to protect the scenic view.

(4) For those applications which meet the requirements of SECTION 5. Eligible Lands and Priority of Acquisition above, the Selection Committee shall cause an appraisal of the applicant's property interest to be made. 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.

(5) Appraisals shall be made by State Certified Appraisers selected by the Selection Committee on a bid basis. The selected appraiser shall not have a property interest, personal interest or financial interest in Eligible 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.

(6) 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 the Township or by Owners of the property appraised but corrections of the appraisal may be made only by the appraiser. If an Owner of property believes it has not been adequately appraised, such Owner may, and within the time allowed on the selection schedule have a review appraisal be made at the Owner's expense by a State Certified appraiser. The appraisal shall then be filed with the Selection Committee. The Selection Committee shall use both appraisals to reach an agreement as to the appropriate value of the development rights.

(7) Terms and conditions of sale and information on the effect of the sale may be discussed by the entire Selection Committee with Owners prior to the submission of written applications.

(8) Written applications by owners who desire to have their Development Rights purchased by the Township shall be submitted on forms provided by the Township. These written offers shall include any development options desired to be retained by the owners.

(9) Upon receiving the recommendations of the Selection Committee, the Township Board shall take final action on such recommendations.

SECTION 8A. Duration of Acquired Interests and Relinquishment of Any Interest.

Development Rights acquired pursuant to this Ordinance shall be held in trust by the Township for the benefit of its citizens in perpetuity, subject to the following: If the Township Board shall find that Farmland and Open Space Land described in this Ordinance can no longer reasonably be used for "Agricultural Use" as to any interest in land acquired with Millage proceeds, the Township Board shall submit to the voters of the Township a proposition to approve of the disposition of such interest. Only upon a majority vote approving such proposition can such interest be disposed of by the Township and the proceeds of such disposition shall only be used for the acquisition of interests in "Eligible Lands" as provided in this Ordinance. A "before and after" appraisal shall be made to determine the Value of Development Rights, and the Township shall not sell the Development Rights for an amount less than the appraised value of the Development Rights determined as follows: 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 retained development rights. Appraisals of the fair market value of Full Ownership or of a property interest other than Development Rights shall be made by State Certified Appraisers selected by the Selection Committee on a bid basis. The selected appraiser shall not have a property interest, personal interest or financial interest in Eligible 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.

SECTION 8B. Amendment of Conservation Easement. Because of the public trust that is inherently involved with the Purchase of Development rights and the corresponding intent that all conservation easements endure in perpetuity, amendments of conservation easements are to be discouraged and can only be amended in compliance with strict standards. An application for an amendment of a Conservation Easement and any amendment of the terms and conditions of a Conservation Easement shall proceed in accordance with the following provisions:

- (1) Application. Application for amending a recorded Conservation Easement shall be made to the Township Clerk on a form approved by the Township Clerk, along with a non-refundable fee as determined by the Township Board by resolution.
- (2) Application Costs.
 - a. The Township shall not be responsible for any expenses incident to the request for amendment.
 - b. All costs associated with the requested amendment, including appraisals, attorney fees and publication fees, shall be paid by the applicant.
 - c. Prior to undertaking any direct expenses related to the request, the Township Board shall require a deposit to cover the estimated costs associated with consideration of the request. All unexpended funds shall be returned to the applicant.
- (3) Public Hearing. The Township Board shall hold a public hearing prior to consideration of an amendment to a Conservation Easement. The notice shall meet the same time requirements as a notice for a Planning Commission public hearing for a Zoning Ordinance amendment.
- (4) Notice. All property owners within 1,320 feet of the property shall be given written notice of the application for amendment of an existing Conservation Easement. The notice shall include the existing and proposed conditions. It shall also state where the public hearing will be held and where the application can be viewed. The notice shall also include the legal description and the street address of the parcel to allow the public to locate the property.
 - a. Standards. An amendment to a Conservation Easement shall not be granted by the Township Board if the amendment causes any of the conditions set forth in Section 8B.(5) i-vii to occur, unless a finding is made that the standards in both Section 8B.(5) b. and c. have been satisfied:
 - i. The amendment increases the number of future dwelling units.
 - ii. The amendment increases the probability of parcel fragmentation.
 - iii. The amendment results in a scattering of residences more than prior to the amendment.
 - iv. The amendment increases the amount of driveway across prime and unique agricultural land necessary to access dwellings.
 - v. The amendment reduces the net amount or quality of productive agricultural land as a result of the amendment.
 - vi. The amended building sites interfere with air drainage.

- vii. The amendment results in new buildings located in identified scenic views.
- b. The possible adverse effects on adjacent property, particularly adverse visual effects on adjacent conservation easement parcels, shall be determined to be less than the positive benefits of the proposed amendment.
- c. The amendment enhances the Conservation Easement program as described in the Findings and Declaration of Purpose in the Ordinance. Examples of enhancement include:
 - a residence or reserved building is moved from the current location to a location further away from land being actively farmed;
 - a residence or future building site is moved and placed in an area of existing buildings;
 - a residence or future building site is moved to a location on adjacent property that consolidates residences in a cluster;
 - an existing building is moved from a prime scenic view and relocated to another site that is out of prime scenic view;
 - a building or reserved building site is moved from a location that creates an adverse impact on farming operations due to its location or access to a site that has less of an adverse impact;
 - the amendment will result in a larger block of agricultural land without an existing residence or future building site.

The Township Board shall make written findings of fact as to the foregoing conditions and standards.

- (5) Appraisal of Changes in Value: Prior to a final decision on a proposed amendment to a recorded Conservation Easement, the Township shall obtain an appraisal of the property (paid for by the property owner) to determine if the value of the retained development rights is increased as a result of the amendment. If the appraisal indicates that the value of the retained development rights is increased as a result of the proposed amendment, the property owner shall pay to the Township Purchase of Development Rights Fund an amount equal to the amount of the increase in the event the amendment is approved.
- (6) Publication. The Township Board shall publish its decision to amend a Conservation Easement in the same manner as an amendment to the Township Zoning Ordinance.
- (7) Referendum. A decision by the Township Board to amend a Conservation Easement shall be subject to a referendum with the same standards and

procedures for a referendum on a Zoning Ordinance amendment. A petition for referendum shall stay any action until the decision has been approved by the voters.

- (8) Recording. All approved amendments that are no longer subject to referendum shall be recorded at the Grand Traverse County Register of Deeds Office along with written findings of fact which explain the reasons for the amendment.

SECTION 9 Related Costs

The costs of appraisal, engineering, surveying, planning, financial, legal and other services lawfully incurred incident to the acquisition of interests in Eligible Lands by the Township shall be paid from the proceeds of the Millage, however, the Township shall not be responsible for expenses incurred by the Owner incident to this transaction.

SECTION 10 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 Township Board is hereby authorized to utilize such funds to purchase interests in Eligible Lands or to otherwise supplement the proceeds of the Millage in the manner provided by this Ordinance and in accordance with the applicable laws or terms governing such grant.

SECTION 11 Township Purpose

The Township Board finds and declares that the use of Township funds for the purpose of paying in whole or in part the cost of acquisition of interests in Eligible Lands as set forth herein, including any costs necessarily incident to such acquisition, and the monitoring and enforcement of development rights easements, or to participation with any party for such purposes will promote the public health, safety, and general welfare of the people of Peninsula Township.

SECTION 12 Development Rights Acquisition Fund

The revenues from the Millage shall be deposited in a Farmland Development Rights Acquisition Fund to be hereafter created in the office of the Treasurer of Peninsula Township (here and after "Acquisition Fund"). Money in such 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 revenues from the Millage and any interest received from the deposit or investment of such revenues shall be applied and used solely for the purposes set forth in this Ordinance.

SECTION 13 Development Rights Enforcement Fund

The Township Board shall establish a Development Rights Enforcement Fund (here and after "Enforcement Fund") from the proceeds of the Millage vote in an amount of not less than \$40,000.00 to be used for enforcement expenses, including initial follow-up with the landowner, review and inspection of remedial measures, and legal, engineering, and other professional services. Money in such Enforcement Fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Township money.

The interest received from the deposit or investment of such revenues shall be

applied and used solely for the purposes set forth in this Section.

SECTION 14 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.