

**ARTICLE 26****AMENDMENT PROCEDURES****Sections:**

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**SECTION 26-1 GENERAL AUTHORITY AND PROCEDURE****26-101. Who May Petition or Apply.**

- a. Applications for amendments, revisions or changes in the zoning district boundary maps or for a Conditional Use Permit may be made by any person who owns the land for which such an amendment, revisions, change or Conditional Use Permit is sought, or by the owner's agent. If such application is made by the owners agent, that agent shall enter upon the application the name and current mailing address of the owner and shall submit written authorization to act as agent for the owner prior to the setting of any public hearing.
- b. Applications for amendments, revisions or changes to the zoning regulations, the zoning district boundary maps and/or conditional use may also be made by the Planning Commission or the Governing Body. Any such proposed amendments, revisions, changes, or conditional use shall be submitted to the Planning Commission for recommendation and report with the final decision made by the Governing Body.

**26-102. Procedures for Consideration of Request for Amendments, Revisions or Changes.**

- a. All applications or requests for amendments, revisions or changes to the zoning regulations, the zoning district boundary maps or for a Conditional Use Permit shall be made to the Zoning Administrator on such forms as provided and acceptable to the Zoning Administrator. The payment of any applicable fee shall be made at the time of the submission of the application.

Immediately upon receipt of an application for rezoning or conditional use by the owner, or agent, and the payment of the appropriate fee, the Zoning Administrator shall note on the application the date of filing and make a permanent record thereof.

- b. All such proposed applications for amendment, revisions or changes to the zoning regulations and/or for a conditional use shall be submitted to the Planning Commission for recommendation. The Planning Commission shall hold a public hearing on the application and shall cause a written summary to be made of the proceedings. Notice of the hearing shall be published once in the official city newspaper at least twenty (20) days prior to the date of the hearing. The date of newspaper publication and the date of the hearing shall not be included in the calculation of twenty (20) days. Notice shall fix the time and place for the hearing, shall give the name and address of the applicant, and shall contain a statement

regarding the proposed changes in regulations or restrictions, or proposed change in the boundary or classification of any zone or district, or the requested conditional use.

- c. If the application is not a general amendment, revision or change to the zoning regulations, but is for a rezoning or Conditional Use Permit affecting specific property, the property affected shall be designated by legal description and by a general description sufficient to identify the property under consideration. In addition to such publication notice, written notice of the proposed rezoning or conditional use shall be mailed at least twenty (20) days before the public hearing to all owners of record of the property affected and all owners of record of lands located within at least 200 feet of the area proposed to be altered. In accordance with state law such notice shall extend 1000 feet in those areas where the notification area extends outside the corporate limits of the City. All notices shall include a statement that a complete legal description is available for public inspection in the office of the Zoning Administrator. When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the Planning Commission and shall not invalidate any subsequent action taken by the Planning Commission or Governing Body.
- d. In the case of an application by the Planning Commission or the Governing Body, all the above stated requirements shall be followed except:
  1. No fee shall be required.
  2. If the application is for an amendment or revision to the text of the zoning regulations, notice of the public hearing shall not be required to be mailed to all affected persons; therefore, a certified list of the owners of land shall not be required.

**26-103. Public Hearing Before Planning Commission.** The Planning Commission shall hold the public hearing at the place and time so stated within the legal notice. The hearing may be adjourned from time to time, and at the conclusion of the hearing the Planning Commission shall take action on the request by preparing a recommendation either to approve, approve with conditions as authorized by these regulations, or disapprove the application. Any such action must be approved by a majority of the members of the Planning Commission present and voting at the hearing.

When the Planning Commission fails to make a recommendation on an application, the Planning Commission shall be deemed to have made a recommendation of disapproval. Any hearing may, for good cause at the request of the applicant, or in the discretion of the Planning Commission, be continued.

**26-104. Action by Planning Commission and Governing Body.**

- a. **Recommendations.** Upon the conclusion of the public hearing, the Planning Commission shall prepare and adopt its recommendations and shall submit the same, together with a record of the hearing thereon, to the Governing Body. The recommendation may be for approval, disapproval or approval in part and reasons for the recommendations shall be included. If a motion for approval fails to gain approval for any reason, the application is deemed to have been denied and will be submitted to the Governing Body. If the recommendation is for approval, the recommendation shall be in the form of an ordinance.
- b. **Amendments to text.** When a proposed amendment would result in a change in the text of these regulations, but would not result in a change of zoning classification of any specific

property, the recommendation of the Planning Commission shall contain a statement as to the nature and effect of such proposed amendment and its reasons for recommending approval or denial.

- c. **Adoption of amendments.** The Governing Body shall not consider an amendment which would result in a change of zoning classification for a specific property, or any application for a Conditional Use Permit, until its next regular meeting after the lapse of the fourteen (14) day protest period provided by state law. A proposed amendment which changes the text of the regulations but would not result in change of zoning classification of any specific property may be considered by the Governing Body without waiting for the lapse of the fourteen (14) day protest period. Upon receipt of the recommendation of the Planning Commission and any protest petitions that have been submitted, the Governing Body shall make its consideration of the application based upon the record submitted by the Planning Commission. However, the Governing Body may, at its sole discretion, supplement that record as follows: (1) Information provided by City staff; or (2) New evidence from the applicant or any interested party, following the Governing Body's determination that: (a) the evidence is material and significant; and (b) good cause existed for it not being presented to the Planning Commission at or before the public hearing. The Governing Body's acceptance and consideration for such new information and/or evidence does not preclude the Governing Body from returning the recommendation of the Planning Commission to the Planning Commission for its reconsideration, whether for purposes of consideration of the new information and/or evidence, or for any other reason for reconsideration. The Governing Body may: 1) approve the recommendation of the Planning Commission without change; 2) override the Planning Commission's recommendation by a 2/3 majority vote of the membership of the Governing Body; or 3) return such recommendation to the Planning Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove. Upon return of a recommendation from the Planning Commission, the Governing Body may take whatever action it deems necessary. Whenever a proposed amendment is defeated by vote of the Governing Body, such amendment shall not thereafter be passed without a further public hearing and notice thereof as provided in this article.
- d. If such amendment or Conditional Use Permit affects the boundaries of any zone or district, the ordinance shall describe the boundaries as amended, or if provision is made for the fixing of the same upon the official maps which as been incorporated by reference, the amending ordinance shall define the change or the boundary as amended, shall order the official maps be changed to reflect such amendment or conditional use, shall amend the section of the ordinance incorporating the same and shall reincorporate such maps as amended.

**26-105. Protest Petition.** Regardless of whether or not the Planning Commission approves or disapproves a proposed zoning amendment, revision, change, or Conditional Use Permit, if a protest petition against such amendment is filed in the office of the City Clerk within fourteen (14) days after the date of the conclusion of the public hearing pursuant to the publication notice, signed by the owners of twenty (20) percent or more of any real property proposed to be rezoned or by the owners of record of twenty (20) percent or more of the total area, excepting public streets and ways, which is located within the notification area described in Section 26-102, the ordinance adopting such amendment shall not be passed except by at least a 3/4 majority vote of all the members of the Governing Body. Immediately upon receiving the filing of such a protest petition the City Clerk shall notify the Zoning Administrator of such petition.

**26-106. Limitations on Successive Applications.** Provisions for a limitation on successive applications to the Planning Commission shall be as follows:

- a. No application for an amendment to these regulations including the zoning map shall be accepted by the Planning Commission if an application for the same amendment has been denied by the Planning Commission within the preceding twelve (12) months. The withdrawal of an application after it has been advertised for public hearing shall constitute a denial of the application just as if the public hearing had been held and concluded. For good cause shown by the applicant the Governing Body may waive the twelve (12) month requirements.
- b. Irrespective of the preceding subsection, an application for a rehearing may be accepted by the Planning Commission if in the judgment of the Planning Commission substantial justification is given. All such applications for a rehearing must be submitted to the secretary at least fifteen (15) days in advance of the next regularly scheduled meeting of the Planning Commission following the denial of the application. If the Planning Commission at such meeting determines that there has been substantial change or justification for a rehearing, the item will be advertised and a public hearing held at the next regular scheduled meeting of the Planning Commission.

**26-107. Posting of Sign.** An applicant for a rezoning or for a Conditional Use Permit may be required by the Zoning Administrator to place a sign upon the lot, tract or parcel of land for which the application was filed. Said sign shall be furnished by the Zoning Administrator to the applicant and the applicant shall display the sign as instructed by the Zoning Administrator. Failure to comply with this requirement shall not deprive the Planning Commission of its jurisdiction or affect any decision, but may be due cause for the Planning Commission to refuse to hear the application or to adjourn the hearing or to require further notice.

**26-108. Factors to be Considered in a Rezoning.** When a proposed amendment would result in a change of the zoning classification of any specific property, the recommendation of the Planning Commission, accompanied by a copy of the record of the hearing, shall contain statements as to the present classification, the classification under the proposed amendment, the reasons for seeking such reclassification, a summary of the facts presented, and a statement of the factors upon which the recommendation of the Planning Commission is based, using the following guidelines:

- a. Whether the change in classification would be consistent with the intent and purpose of these regulations;
- b. The character and condition of the surrounding neighborhood and its effect on the proposed change;
- c. Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and, if so, the nature of such changed or changing conditions;
- d. The current zoning and uses of nearby properties, and the effect on existing nearby land uses upon such a change in classification;
- e. Whether every use that would be permitted on the property as reclassified would be compatible with the uses permitted on other property in the immediate vicinity;
- f. The suitability of the applicants property for the uses to which it has been restricted;
- g. The length of time the subject property has remained vacant or undeveloped as zoned;

- h. Whether adequate sewer and water facilities, and all other needed public services exist or can be provided to serve the uses that would be permitted on the property if it were reclassified;
- i. The general amount of vacant land that currently has the same zoning classification proposed for the subject property, particularly in the vicinity of the subject property, and any special circumstances that make a substantial part of such vacant land available or not available for development;
- j. The recommendations of professional staff;
- k. Whether the proposed amendment would be in conformance to and further enhance the implementation of the City's Comprehensive Plan;
- l. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed upon the applicant by not upgrading the value of the property by such reclassification; and,
- m. Such other factors as the Planning Commission may deem relevant from the facts and evidence presented in the application.

**26-109. Applications for Conditional Use Permit.**

- a. Because of particular conditions associated with their activities, certain uses which might have an adverse effect upon nearby properties or upon the character and future development of a district are not permitted outright in districts, but are allowed as conditional uses when their proposed location is supplemented by additional requirements so as to make the use requested compatible with the surrounding property, the neighborhood and the zoning jurisdiction.
- b. In approving a conditional use, the minimum requirements set out in these regulations for the underlying district must be met unless otherwise specifically reduced by the Governing Body. The requirements of the underlying district may be made more stringent if there are potentially injurious effects which may be anticipated upon other property or the neighborhood or which may be contrary to public health, safety or welfare.
- c. A site plan will be required, for alterations to existing buildings and any new construction, for consideration in the review process of a conditional use permit application, which includes the following minimum information:
  - 1. The dimensions and address of the tract to be used;
  - 2. The location of all proposed improvements including driveway access, off-street parking and other such facilities the applicant proposes to install;
  - 3. Grade elevations (if they are to be changed);
  - 4. Building setbacks from all property lines;
  - 5. Front, side and rear elevation drawings of all improvements to be erected. For two or three family structures in low density zoning districts, front and side elevation drawings will be required;
  - 6. The location and type of plantings, screening, and/or other buffers proposed; and

7. Such other items as the Planning Commission shall deem reasonably necessary to properly process the application.

(26-109-c added 02-15-06)

**26-110. Factors to be Considered in Permit Applications.** The Planning Commission may recommend approval of a conditional use that is expressly authorized to be permitted in a particular zoning district, and the Governing Body may approve such conditional use, using the following factors as guidelines:

1. Whether approval of the conditional use would be consistent with the intent and purpose of these regulations;
2. Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood;
3. Whether the proposed use places an undue burden on the existing transportation, utility and service facilities in the area affected and, if so, whether such additional facilities can be provided;
4. Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected;
5. The length of time the subject property has remained vacant or undeveloped as zoned;
6. Whether the applicants property is suitable for the proposed conditional use;
7. The recommendations of professional staff;
8. Whether the proposed conditional use would be in conformance to and further enhance the implementation of the City's Comprehensive Plan;
9. Whether the proposed conditional use, if it complies with all the conditions upon which the approval is made contingent, will not adversely affect the property in the area affected;
10. Such other factors as the Planning Commission may deem relevant from the facts and evidence presented in the application; and
11. For uses as solid waste disposal facilities, including sanitary landfills, construction and demolition landfills and transfer stations, whether the proposed conditional use is consistent with the adopted Solid Waste Management Plan of Franklin County, and amendments thereto.

**26-111. Traffic Studies.** In the case of an application for rezoning of land or for a Conditional Use Permit for a use which may, in the opinion of the Planning Commission, substantially change traffic patterns, or create traffic congestion, the Planning Commission may require that the applicant procure the services of a competent professional traffic engineer for the purpose of preparing a traffic study to be presented to the Planning Commission prior to its taking action on an application for rezoning or for a Conditional Use Permit. Such traffic study shall show that the traffic generated by the proposed development will be handled on the site in an orderly and efficient manner, that

vehicular ingress and egress from the site onto public streets will function in an orderly and efficient manner and that no undue burden will be placed upon the existing public street system. The results of the traffic study shall be used in determining the impact of the proposed rezoning or Conditional Use Permit and guide the development of a recommendation or decision regarding the same.

**26-112. Platting.** Approval of any rezoning may be conditioned upon approval of final platting of some or all the property to be rezoned.

**SECTION 26-2 TABLE OF LESSER CHANGE**

**26-201.** The following Table of Lesser Change is for the use of the Planning Commission in determining when republication of an application for rezoning is required. This Table of Lesser Change designates which zoning classifications are lesser changes authorized within the published zoning classifications. The Table of Lesser Change lists zoning classifications in descending order from the most restrictive zoning district to the least restrictive zoning district. The Planning Commission may modify, at its discretion, an application for rezoning to a particular district by recommending a rezoning to a district of lesser change, as determined by the following Table of Lesser Change:

<i><b>Residential</b></i>	<i><b>Commercial</b></i>	<i><b>Industrial</b></i>
CS Countryside	C-1 Office and Service Business	I-1 Light Industrial
R-1 Low Density	C-2 Restricted Commercial	I-2 Heavy Industrial
R-2 Medium Density	C-3 General Commercial	
R-3 High Density	C-4 Downtown Business	

**SECTION 26-3 TIME OF PERFORMANCE IN REZONING**

**26-301.**

- a. In cases where the Planning Commission and Governing Body deem that time of development is a critical factor in protecting the public welfare in a rezoning action, a time of performance may be included in the rezoning ordinance. Such time allowed for performance shall be reasonable. Such time shall be not less than five (5) years from the effective date of the ordinance for all rezonings into districts in which single-family dwellings are allowed and not less than two (2) years from the effective date of the ordinance for all rezonings into districts in which single-family dwellings are not allowed. Such ordinance shall state what constitutes performance in each case.
- b. If at the termination of such stipulated period of time performance as required has not occurred, the Planning Commission may, within six (6) months thereafter, publish notice and conduct a public hearing for purposes of determining whether or not to change the zoning to a more restrictive district. The owner of the property in question shall be notified by certified mail of the proposed hearing not less than twenty (20) days prior to the date of the hearing. Other notification and posting as required in this section shall be performed and all proceedings shall be the same as for other rezoning actions.

- c. It shall be the purpose of this hearing to hear the owner and other interested parties and make a determination as to which of the following actions would be recommended to the Governing Body.
  - 1. Extend the time of performance to a specified date,
  - 2. Remove the time of performance, or
  - 3. Rezone the land.
- d. After the hearing the Planning Commission shall forward its recommendations to the Governing Body. The Governing Body will then act to approve or disapprove the recommended action, consistent with these regulations.

## SECTION 26-4 CONDITIONAL USE PERMITS

**26-401.** The application, notice, public hearing, and action procedures set forth in this Article shall be applicable to all applications for Conditional Use Permits submitted after the effective date of these regulations.

**26-402.** The Governing Body, when approving a Conditional Use Permit, shall specify the period of time for which the permit is valid or shall state that the term of the permit is not limited in time.

**26-403.** Upon approval of a Conditional Use Permit, the Zoning District Map shall be changed in the manner outlined in this Article.

**26-404.** The Planning Commission may revoke any Conditional Use Permit upon finding that (a) necessary building permits have not been issued within twelve (12) months of approval of the Conditional Use Permit or (b) if no building permit is required for the use allowed under the Conditional Use Permit, that the use so allowed has not been commenced within twelve (12) months of the approval of the Conditional Use Permit. No revocation shall occur for failure to commence use under a Conditional Use Permit once a valid building permit has been issued or conditional use commenced, regardless of the running of such twelve (12) month period.

### **26-405. Expiration and Revocation or Modification of Conditional Use Permits.**

- a. All Conditional Use Permits will automatically expire, be considered abandoned and become invalid when:
  - 1. A definite time frame has been established as a condition and that time frame has elapsed.
  - 2. Conditional Use Permits in which the authorized activity, service or use has ceased for three hundred and sixty-five (365) continuous days, for any reason.
  - 3. Conditional Use Permits subject to termination due to the provisions of paragraph 2 above, may file a written request with the Zoning Administrator at least thirty (30) days prior to the expiration date for an extension of time to begin to reinstitute the activity, service or use. The application shall state specific reasons for such an extension and shall include all reports from appropriate city staff reports and shall be sent to the

Planning Commission for consideration within thirty (30) days of filing of the application. The Planning Commission may grant an extension if it finds that circumstances beyond the normal control of the holder of the permit resulted in a cessation of the activity, service or use.

- b. Any Conditional Use Permit, authorized in accordance with this Article, may be revoked or modified when the Planning Commission finds:
1. That there has been a failure to comply with the conditions established for that Conditional Use Permit.
  2. That the Conditional Use Permit has substantially expanded or deviated from its original use and intent.
  3. That the Conditional Use Permit has been found by a court of law and/or federal or state administrative agency to be an illegal activity or to be a nuisance as defined by Kansas statutes.
- c. Action to modify or revoke a Conditional Use Permit may be initiated by the Zoning Administrator. Upon receipt of a complaint, the Zoning Administrator shall investigate the complaint. If an investigation finds that the complaint is valid and sufficient grounds exist for modification or revocation of a Conditional Use Permit, the matter shall be referred to the Planning Commission for a hearing.

**26-406.** In all instances where a use was allowed under a valid Special Use Permit properly issued prior to the effective date of these regulations, which such use, (a) would have been a nonconforming use under these regulations but for the issuance of such permit, or (b) is a use which is allowed as a conditional use under these regulations, the property owner shall continue to comply with the conditions set forth in that permit until the permit expires or is otherwise terminated in accordance with the provisions of these regulations.

## **SECTION 26-5 FEES FOR REZONINGS AND CONDITIONAL USE PERMITS**

**26-501.** A fee, in the amount established by ordinance adopted by the Governing Body, shall accompany an application for rezoning or Conditional Use Permit which fee shall include the cost of publication notice.

**26-502.** No fee shall be required if the zoning change is initiated by the Planning Commission or the Governing Body. No fee shall be required if either the Planning Commission or Governing Body initiate an amendment to the zoning regulations that will not affect specific property.