

## ARTICLE 26

### AMENDMENT PROCEDURES

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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 (rezonings) 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 owner's 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 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 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 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. The applicant shall provide a list of the owners of record of said lands at the time of the filing of the application. The Zoning Administrator may require that such list be certified by a licensed abstractor.
- 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 made to the Governing Body 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 consider the application and 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 have 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.
- e. In its consideration of an amendment to a zoning classification or a Conditional Use Permit the Governing Body shall rely upon the record as prepared by the Planning Commission, such record to be supplemented only by information provided by City staff. Additional new information for Governing Body consideration shall be allowed only upon findings by the Governing Body that (1) good cause exists as to why the evidence or testimony sought to be presented to the Governing Body was not presented to the Planning Commission and (2) it is in the best interests of both the applicant and the public that the evidence or testimony be presented to the Governing Body rather than having the matter sent back to the Planning Commission for its consideration of the evidence or testimony.

**26-105. Protest Petition.** Regardless of whether or not the Planning Commission recommends approval or disapproval of 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.

**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 requirement.
- 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: This entails a description of the neighborhood as to existing land uses, intensity of development, age and general condition of structures.
- 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: The zoning surrounding the property at issue, along with the actual uses on those properties, is to be considered.
  - 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: Consideration is to be given as to whether each of the permitted uses under the proposed rezoning would be compatible with existing uses. The focus is upon issues which can be addressed via zoning, such as structure height, yards and setbacks, and minimum lot sizes.
  - f. The suitability of the applicant's property for the uses to which it has been restricted: How the property at issue is presently zoned, and the uses permitted under that zoning is to be considered, as well as whether those uses are appropriate given the zoning of the surrounding neighborhood. Also to be considered is whether the presently allowed uses are the only uses appropriate for the subject property.
  - g. The length of time the subject property has remained vacant or undeveloped as zoned: Consideration is to be given as to whether the subject property is vacant because its present zoning is unsuitable, or whether it is vacant for reasons unrelated to zoning, e.g., a surplus of similarly-zoned property, problems with financing, lack of infrastructure or other development problems.
  - 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 and advisors: Staff

recommendations should be based upon the factors set out in this section, the adopted comprehensive plan, other adopted plans and reports, and the evidence in the record.

- k. Whether the proposed amendment would be in conformance to and further enhance the implementation of the City's Comprehensive Plan: The question here is whether the requested rezoning is consistent with the recommendations of the adopted comprehensive plan. If it is not, is the incompatibility because the plan is outdated or have conditions changed in the area or neighborhood of the subject property?
- 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: This factor acknowledges that the basis for zoning is protection of public health, safety and welfare. Any rezoning request involves balancing the property owner's interests with the interests of the public.
- 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.** 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.

**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 following the same explanation of those factors as set out in Section 26-108 for rezonings:

- a. Whether approval of the conditional use would be consistent with the intent and purpose of these regulations;
- b. Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood;
- c. Whether the proposed use places an undue burden on the existing public infrastructure in the area affected and, if so, whether additional infrastructure can be provided;

- d. Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected;
- e. The length of time the subject property has remained vacant or undeveloped as zoned;
- f. Whether the applicant's property is suitable for the proposed conditional use;
- g. The recommendations of professional staff and advisors;
- h. Whether the proposed conditional use would be in conformance to and further enhance the implementation of the City's Comprehensive Plan;
- i. 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;
- j. For such uses as solid waste disposal facilities, including sanitary landfills, construction and demolition landfills and transfer stations, whether the proposed conditional use is consistent with any adopted Solid Waste Management Plan of Cowley County, and amendments thereto; and
- k. Such other factors as the Planning Commission may deem relevant from the facts and evidence presented in the application.

## **SECTION 26-2 CONDITIONAL USE PERMITS**

**26-201.** 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.

**26-202.** 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.

**26-203.** Upon approval of a Conditional Use Permit, the Zoning District Map shall be changed in the manner outlined in this Article.

## **SECTION 26-3 TABLE OF LESSER CHANGE**

**26-301.** The following Table of Lesser Change is for the use of the Planning Commission in determining when an application for rezoning is or is not 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 to the Governing Body a rezoning to a district of lesser change, as determined by the following Table of Lesser Change:

R-1	Low Density Residential District
R-2	Medium Density Residential District
R-3	High Density Residential District
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C-1	Office and Service Business District
C-2	Restricted Commercial District
C-3	General Commercial District
C-4	Central Business District
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I-1	Light Industrial
I-2	Heavy Industrial

#### **SECTION 26-4 FEES FOR REZONINGS AND CONDITIONAL USE PERMITS**

**26-401.** A fee, in the amount established by ordinance adopted by the Governing Body, shall accompany an application for rezoning or Conditional Use Permit.

**26-402.** 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.