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## Article 7.23 Amendment

### 7.23.01 Purpose

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The purpose of this article is to identify the procedures for initiation and review of text and map amendments to this zoning ordinance and provides standards for approval of the proposed amendments.

### 7.23.02 Initiation of Amendments

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- (a) Proposed amendments to the text of the ordinance or zoning map may be initiated by:
- (1) The City Commission by motion
  - (2) The Planning Commission by motion
  - (3) The Zoning Board of Appeals by motion
  - (4) Owner of a parcel, for that parcel; or someone else with approval of the owner or under the terms of a purchase agreement, by application

### 7.23.03 Application

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- (a) Application by a resident or property owner for an amendment shall be submitted to Planning Department at least twenty (20) days prior to the Planning Commission meeting at which the public hearing on the request will be held.
- (1) The application for the amendment shall include:
    - a. Name, address, and phone number of applicant
    - b. Signature of owner of the subject parcel if not the applicant, proof of their approval of the request or a copy of a purchase agreement on the property
    - c. Street address and tax ID number
    - d. The current zoning of the subject parcel
    - e. The proposed zoning of the subject parcel
    - f. A copy of the deed for the subject property or its legal description
    - g. A traffic study as required by *Section 7.18.04(I)*
    - h. The fee established by the City Commission

- (2) Requests to rezone two or more non-contiguous parcels require separate applications.
- (b) Amendments initiated by the City Commission, Planning Commission or ZBA shall be submitted to Planning Department at least twenty (20) days prior to the Planning Commission meeting at which the public hearing on the request will be held and shall consist of a copy of the motion passed initiating the request and any associated information. No fee shall be required.
- (c) Amendment applications shall be submitted to the city departments for review and comment as determined appropriate by the Planning Department prior to the Planning Commission public hearing.

#### 7.23.04 Public Hearing

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The Planning Commission shall hold a public hearing on any zoning amendment initiated before action on the amendment is taken by the City Commission.

- (a) **Notice Requirement.** Notice of the public hearing shall be provided as required in *Section 7.21.07* of this ordinance.
- (b) **Additional Notice Requirement.** In addition, mailed notice will be provided to each electric, gas, and pipeline public utility company, each telecommunication service provider, each railroad operating within the district or zone affected, and the airport manager of each airport, that registers its name and mailing address with the city clerk for the purpose of receiving the notice of public hearing.
- (c) **Planning Commission Hearing and Recommendations.** After conducting the required public hearing, the Planning Commission shall make a recommendation to approve or deny the proposed amendment to the ordinance. The Planning Commission shall transmit its recommendation along with a summary of comments received at the public hearing.

#### 7.23.05 City Commission

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Upon receipt of the recommendations of the Planning Commission, the City Commission shall undertake consideration of the proposed rezoning or text amendment.

- (a) If they wish to, the City Commission may hold a public hearing on the amendment. If they choose to hold a public hearing, the City Commission must meet the notice requirements outlined in *Section 7.21.07*.
- (b) If the City Commission proposes any changes to the amendments they may, at their option, send the changes back to the Planning Commission for their review.
- (c) If a property owner submits a request to the city clerk by certified mail to be heard regarding a proposed amendment, the City Commission must provide an opportunity for that person to speak on the amendment prior to making a decision.

- (d) An amendment to the zoning ordinance requires approval by a majority of the members of the City Commission, not just a majority of the members attending the meeting.
- (e) Upon presentation of a protest petition meeting the requirements of this subsection, an amendment to a zoning ordinance which is the object of the petition shall be passed only by a two-thirds (2/3) vote of the City Commission. The protest petition shall be presented to the City Commission before final legislative action on the amendment, and shall be signed by one of the following:
  - (1) The owners of at least 20% of the area of land included in the proposed change.
  - (2) The owners of at least 20% of the area of land included within an area extending outward one-hundred (100) feet from any point on the boundary of the land included in the proposed change.
  - (3) Publicly owned land shall be excluded in calculating the 20% land area requirement.
- (f) Following adoption of the zoning amendment, one (1) notice of adoption shall be published in a newspaper of general circulation in the city within fifteen (15) days of adoption. The notice shall include:
  - (1) A summary of the regulatory effect of the amendment or the actual text of the amendment.
  - (2) The effective date of the ordinance. This date may be as few as seven (7) days after the publication of the ordinance.
  - (3) The place and time where a copy of the ordinance may be purchased or inspected.

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**7.23.06 Standards for Approval**

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In reviewing any proposed amendment the Planning Commission and City Commission shall consider the following:

- (a) In the case of a proposal to amend the zoning ordinance text the city shall find:
  - (1) The change is necessary to clarify a provision of the ordinance, or
  - (2) The change is necessary to correct a mistake in the ordinance, or
  - (3) The change is necessary to implement a goal or policy of the City Master Plan, or
  - (4) The change is necessary to improve administration of the ordinance or to better serve the community.
  - (5) In addition to one (1) or more of the above findings, the Planning Commission must determine that the requested amendment is consistent with the City Master Plan or

that a mistake in the plan or changes in conditions or City policy have occurred that are relevant to the request. If the Planning Commission recommends approval of a request that is not in compliance with the current plan due to a mistake or change in conditions or policy, it shall immediately initiate an amendment to the plan to address the identified mistake or change.

- (b) In the case of a proposed zoning map amendment (rezoning) the city shall find one of the following:
- (1) The requested amendment is in compliance with the City Master Plan or that a mistake in the plan or changes in conditions or city policy have occurred that are relevant to the request. If the Planning Commission recommends approval of a request that is not in compliance with the current plan due to a mistake or change in conditions or policy, it shall immediately initiate an amendment to the plan to address the identified mistake or change.
  - (2) The property cannot be reasonably used as it is currently zoned and the proposed request represents the most suitable alternative zoning classification based on the City Master Plan.

### 7.23.07 Conditional Rezoning

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- (a) **Intent.** It is recognized that there are certain instances where it would be in the best interests of the City, as well as advantageous to property owners seeking a change in zoning classification, if certain conditions could be proposed by property owners as part of a request for a rezoning. It is the intent of this section to provide a process consistent with the provisions of *Section 405 of the Michigan Zoning Enabling Act (PA 110 of 2006)* by which an owner seeking a rezoning may voluntarily propose conditions regarding the use and/or development of land as part of the rezoning request.
- (b) **Application and Offer of Conditions**
- (1) An owner of land may voluntarily offer in writing conditions relating to the use and/or development of land for which a rezoning is requested. This offer may be made either at the time the application for rezoning is filed or may be made at a later time during the rezoning process.
  - (2) The required application and process for considering a rezoning request with conditions shall be the same as that for considering rezoning requests made without any offer of conditions, except as modified by the requirements of this section.
  - (3) The owner's offer of conditions may not purport to authorize uses or developments not permitted in the requested new zoning district.
  - (4) Approval of a conditional rezoning does not guarantee approval of any Special Land Use which may be required as part of the conditional rezoning project. Review of Special Land Use must follow the procedures outlined in *Article 7.19* before development can begin.

- (5) Approval of a conditional rezoning does not guarantee approval of any variance which may be required as part of the conditional rezoning project, and review of the variance must follow the procedures outlined in *Article 7.22* before development can begin.
  - (6) Approval of a conditional rezoning does not guarantee approval of any site plan which may be required as part of the conditional rezoning project, and review of the site plan must follow the procedures outlined in *Article 7.18* before development can begin.
  - (7) The offer of conditions may be amended during the process of rezoning consideration provided that any amended or additional conditions are entered voluntarily by the owner. An owner may withdraw all or part of its offer of conditions any time prior to final rezoning action of the City Commission provided that, if such withdrawal occurs after the Planning Commission's public hearing on the original rezoning request, then the rezoning application shall be referred to the Planning Commission for a new public hearing and a new recommendation, with notice as required by this article.
- (c) **Planning Commission Review.** The Planning Commission, after public hearing and consideration of the factors for rezoning set forth in *Section 7.23.06* of this ordinance, may recommend approval, approval with recommended changes or denial of the rezoning; provided, however, that any recommended changes to the offer of conditions are acceptable to and thereafter offered by the owner.
- (d) **City Commission Review.** After receiving the Planning Commission's recommendation, the City Commission shall deliberate upon the requested rezoning and may approve or deny the conditional rezoning request. The City Commission's deliberations shall include, but not be limited to, a consideration of the factors for rezoning set forth in *Section 7.23.06* of this ordinance. Should the City Commission propose amendments to the proposed conditional rezoning and amendments are acceptable to and offered by the owner, then the rezoning application shall be referred to the Planning Commission for a new public hearing and a new recommendation, with notice as required by this article.
- (e) **Approval**
- (1) If the City Commission finds the owner's rezoning request and offer of conditions acceptable, the offered conditions shall be incorporated into a formal written Statement of Conditions provided said conditions conform with this section. The Statement of Conditions shall be incorporated into the ordinance adopted by the City Commission.
  - (2) The Statement of Conditions shall:
    - a. Be prepared as a notarized affidavit prepared and signed by the owner.
    - b. Contain a legal description of the land to which it pertains.

- c. Contain a statement acknowledging that the Statement of Conditions runs with the land and is binding upon successor owners of the land unless otherwise specified by this section.
  - d. Include any diagram, plans or other documents submitted that are necessary to illustrate the implementation of the Statement of Conditions.
  - e. Contain the notarized signatures of all of the owners of the subject land preceded by a statement attesting to the fact that they voluntarily offer and consent to the provisions contained within the Statement of Conditions.
- (3) Upon the rezoning taking effect, the Zoning Map shall be amended to reflect the new zoning classification along with a designation that the land was rezoned with a Statement of Conditions. The zoning map shall also include a listing of all lands rezoned with a Statement of Conditions.
- (f) **Compliance with Conditions**
- (1) Any person who establishes a development or commences a use upon land that has been rezoned with conditions shall continuously operate and maintain the development or use in compliance with all of the conditions set forth in the Statement of Conditions. Any failure to comply with a condition contained within the Statement of Conditions shall be deemed a nuisance per se and shall constitute a violation of this Zoning Ordinance and be punishable accordingly.
  - (2) No permit or approval shall be granted under this ordinance for any use or development that is contrary to an applicable Statement of Conditions.
- (g) **Time Period for Establishing Development or Use.** Unless another time period is specified in the ordinance rezoning the subject land, the site plan for approved development shall be submitted within two (2) years after the rezoning took effect. In cases where a site plan is not required, the approved use of land or buildings must have commenced within one year unless another time period is specified in the ordinance rezoning the subject land. These time limitations may upon written request be extended by the City Commission if:
- (1) It is demonstrated to the City Commission's reasonable satisfaction that there is a strong likelihood that the development and/or use will commence within the period of extension and proceed diligently thereafter to completion and
  - (2) The City Commission finds that there has not been a change in circumstances that would render the current zoning with Statement of Conditions incompatible with other zones and uses in the surrounding area or otherwise inconsistent with sound zoning policy. All applicable project completion deadlines in this ordinance related to site plans, special land use and variances shall apply.

- (h) **Reversion of Zoning.** If approved development and/or use of the rezoned land does not occur within the time frame specified under *Subsection (g)* above, then the land shall revert to its former zoning classification as set forth in *Section 405 (2) of PA 110*. The procedure for considering and making this reversionary rezoning shall be the same as applies to all other rezoning requests.
- (i) **Subsequent Rezoning of Land.** When land that is rezoned with a Statement of Conditions is rezoned to a different zoning classification or to the same zoning classification but with a different or no Statement of Conditions, whether as a result of a reversion of zoning pursuant to *Subsection (h)* or otherwise, the Statement of Conditions imposed under the former zoning classification shall cease to be in effect. If a Statement of Conditions has been recorded, upon the owner's written request, the City Clerk shall record with the Lapeer County Register of Deeds a notice that the Statement of Conditions is no longer in effect.
- (j) **Amendment of Conditions**
- (1) During the time period for commencement of an approved development or use specified pursuant to *Subsection (g)* or during any extension granted by the City Commission, the City Commission shall not add to or alter the conditions in the Statement of Conditions.
- (2) The Statement of Conditions may be amended in the same manner as was prescribed for the original rezoning and Statement of Conditions.
- (k) **City Right to Rezone.** Nothing in the Statement of Conditions or in the provisions of this section shall be deemed to prohibit the City from rezoning all or any portion of land that is subject to a Statement of Conditions to another zoning classification. Any rezoning shall be conducted in compliance with this ordinance and the Michigan Zoning Enabling Act.
- (l) **Failure to Offer Conditions.** The City shall not require an owner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect an owner's rights under this ordinance.