

ARTICLE 30.00

AMENDMENTS

Section 30.01 -- INITIATION OF AMENDMENT

The City Council may amend, supplement, or change the district boundaries or the regulations herein, pursuant to the authority and procedures set forth in Michigan Public Act 110 of 2006, as amended. Text amendments may be proposed by any governmental body or any interested person or organization. Changes in district boundaries may be proposed by any governmental body, any person having a freehold interest in the subject property, or by the designated agent of a person having a freehold interest in the property.

Section 30.02 -- APPLICATION FOR AMENDMENT

A petition for an amendment to the text of this Ordinance or an amendment to change the zoning classification of a particular property, shall be commenced by filing a petition on the forms provided by the Planning and Community Development Department and accompanied by the fees specified by the City Council. The petition shall describe the proposed amendment and shall be signed by the applicant. Petitions for rezoning of a specific site shall be accompanied by a plot plan or survey, which shall contain the following information:

1. Applicant's name, address, and telephone number.
2. Scale, northpoint, and dates of submittal and revisions.
3. A legal description.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within fifty (50) feet of the site.
5. Evidence of agreement of owner of land to be included in the rezoning.
6. For Zoning Map Amendments, the following information shall also be provided:
 - a. Proposed lot lines and lot dimensions.
 - b. Dimensions, centerlines, and right-of-way widths of abutting streets and alleys.
 - c. The general location of existing drainage courses and wetlands.
 - d. All existing and proposed easements.

Section 30.03 -- AMENDMENT REVIEW PROCEDURES

After the completed petition and all required supporting materials have been received and fees paid, the petition shall be reviewed in accordance with the following procedures:

A. Planning Commission Review

If the Planning and Community Development Department determines that the application is complete, a public hearing shall be scheduled.

1. Public Hearing Notice

The Planning Commission shall hold not less than one (1) public hearing, notice of which shall be given by one (1) publication in a newspaper of general circulation in the City, to be published not less than fifteen (15) days before the date of the hearing. Not less than fifteen (15) days notice of the time and place of the hearing shall be given to each electric, gas, pipeline and telephone public utility company, and to each railroad operating within the district or zone affected, that registers its name and mailing address with the City. In addition, the Planning Commission shall give notice of the proposed rezoning to the owner of the property in question, to all persons to whom any real property within three hundred (300) feet of the premises in question is assessed, and to the occupants of all single and 2-family dwellings within three hundred (300) feet. The notice shall be given not less than fifteen (15) days before the hearing, and shall state the time, place, date, and purpose of the hearing.

2. Planning Commission Action

Following the hearing on the proposed amendment, the Planning Commission shall make its recommendation(s), which it shall transmit to the City Council with the comments made at the public hearing.

B. City Council Review

City Council review shall follow Planning Commission review and recommendation.

1. Public Hearing

The City Council may hold additional hearings if the Council considers it necessary, following the hearing and notice requirements of Michigan Public Act 110 of 2006, as amended. If additional City Council public hearings are deemed necessary, notice of which shall be given by the City Clerk in one (1) publication in a newspaper of general circulation in the City, to be published not less than fifteen (15) days before the date of the hearing. Not less than fifteen (15) days notice of the time and place of the hearing shall be given to each electric, gas, pipeline and telephone public utility company, and to each railroad operating within the district or zone affected, that registers its name and mailing address with the City. In addition, the City Council, via the City Clerk's office, shall give notice of the proposed rezoning to the owner of the property in question, to all persons to whom any real property within three hundred (300) feet of the premises in question is assessed, and to the occupants of all single and 2-family dwellings within three hundred (300) feet. The notice shall be given not less than fifteen (15) days before the hearing, and shall state the time, place, date, and purpose of the hearing.

2. City Council Action

Unless a protest petition has been filed on the proposed amendment, the City Council may, by majority vote of its membership, adopt the proposed amendment, reject the proposed amendment, or refer the proposed amendment back to the Planning Commission for further review and recommendation within a specified time period. Thereafter, the City Council may either adopt the amendment with or without the recommended revisions, or reject it. If a protest petition has been filed on the proposed amendment, the City Council may by a two-thirds vote of its membership adopt the proposed amendment, reject the proposed amendment, or refer the proposed amendment back to the Planning Commission for further review and recommendation within a specified time period. A protest petition shall be presented to the City Council before final legislative action on the amendment and signed by one (1) of the following:

- a. The owners of at least twenty percent (20%) of the area of land included in the proposed change;
- b. The owners of at least twenty percent (20%) of the area of the 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. Publicly owned land shall be excluded in calculating the twenty percent (20%) land area requirement.

C. Text Amendment Review Considerations

The Planning Commission and City Council shall at minimum, consider the following before taking action on any proposed text amendment:

1. Is the proposed amendment consistent with the City’s Master Plan?
2. Have conditions changed since the Zoning Ordinance was adopted that justifies the amendment?
3. Was there a mistake in the Zoning Ordinance that justifies the amendment?
4. Will the amendment correct an inequity created by the Zoning Ordinance?
5. Will the amendment merely grant special privileges?
6. Will the amendment result in unlawful exclusionary zoning?

D. Zoning Map Amendment Review Considerations

The Planning Commission and City Council shall at minimum, consider the following before taking action on any proposed zoning map amendment:

1. Is the proposed amendment consistent with the City’s Master Plan?
2. Will the proposed amendment be in accordance with the intent and purpose of the Zoning Ordinance?
3. Have conditions changed since the Zoning Ordinance was adopted that justifies the amendment?
4. Will the amendment merely grant special privileges?
5. Will the amendment result in unlawful exclusionary zoning?
6. Will the amendment set an inappropriate precedent?
7. Is the proposed zoning consistent with the zoning classification of surrounding land?
8. Is the proposed zoning consistent with the future land use designation of the surrounding land in the City Master Plan?
9. Could all requirements in the proposed zoning classification be complied with on the subject parcel?
10. Is the proposed zoning consistent with the trends in land development in the general vicinity of the property in question?

E. Conditional Zoning Map Amendment Considerations

1. Intent

It is recognized that there are certain instances when 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 are proposed by property owners as part of a request for a zoning map amendment, otherwise referred to as rezoning. It is the intent of this Section to provide a process consistent with the provisions of the City and Village Zoning Act 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.

2. Application and Offer of Conditions.

- a. All owners 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.
- b. 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.
- c. The owner's offer of conditions may not purport to authorize uses or developments not permitted in the requested new zoning district.
- d. The owner's offer of conditions shall bear a reasonable and rational relationship to the property for which rezoning is requested.
- e. Any use or development proposed as part of an offer of conditions that would require a conditional land use permit under the terms of this Ordinance may only be commenced if a conditional land use permit for such use or development is ultimately granted in accordance with the provisions of this Ordinance.
- f. Any use or development proposed as part of an offer of conditions that would require a variance under the terms of this Ordinance may only be commenced if a variance for such use or development is first granted by the Zoning Board of Appeals in accordance with the provisions of this Ordinance.
- g. Any use or development proposed as part of an offer of conditions that would require site plan approval under the terms of this Ordinance may only be commenced if site plan approval for such use or development is ultimately granted in accordance with the provisions of this Ordinance.
- h. 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 Council provided that, if such withdrawal occurs subsequent to 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 with appropriate notice and a new recommendation.

3. Planning Commission Review

The Planning Commission, after public hearing and consideration of the factors for rezoning set forth in Section 30.03 of this Ordinance, may recommend approval, approval with conditions offered in writing by the applicant or denial of the rezoning.

4. City Council Review

After receipt of the Planning Commission's recommendation, the City Council shall deliberate upon the requested rezoning and may approve or deny the conditional rezoning request. The City Council's deliberations shall include, but not be limited to, a consideration of the factors for rezoning set forth in Section 30.03 of this Ordinance.

Should the applicant offer additional conditions after the Planning Commission recommendation has been made that substantially impact the zoning request, City Council shall refer the matter back to the Planning Commission for further review and recommendation.

5. Approval.

a. If the City Council finds the rezoning request and offer of conditions acceptable, the offered conditions shall be incorporated into a formal written Statement of Conditions acceptable to the owner and conforming in form to the provisions of this Section. The Statement of Conditions shall be incorporated into the ordinance adopted by the City Council to accomplish the requested rezoning.

b. The Statement of Conditions shall:

i. Be in a form recordable with the Register of Deeds of the County in which the land is located or, in the alternative, be accompanied by a recordable Affidavit or Memorandum prepared and signed by the owner giving notice of the Statement of Conditions in a manner acceptable to the City Council.

ii. Contain a legal description of the land to which it pertains.

iii. Contain a statement acknowledging that the Statement of Conditions runs with the land and is binding upon successor owners of the land.

iv. Incorporate by attachment or reference any diagram, plans or other documents submitted or approved by the owner that are necessary to illustrate the implementation of the Statement of Conditions. If any such documents are incorporated by reference, the reference shall specify where the document may be examined.

v. Contain a statement acknowledging that the Statement of Conditions or an Affidavit or Memorandum giving notice thereof may be recorded by the City with the Register of Deeds of the County in which the land referenced in the Statement of Conditions is located.

vi. 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.

c. 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 City Clerk shall maintain a listing of all lands rezoned with a Statement of Conditions.

- d. The approved Statement of Conditions or an Affidavit or Memorandum giving notice thereof shall be filed by the City with the Register of Deeds of the County in which the land is located. The City Council shall have authority to waive this requirement if it determines that, given the nature of the conditions and/or the time frame within which the conditions are to be satisfied, the recording of such a document would be of no material benefit to the City or to any subsequent owner of the land.
- e. Upon the rezoning taking effect, the use of the land so rezoned shall conform thereafter to all of the requirements regulating use and development within the new zoning district as modified by any more restrictive provisions contained in the Statement of Conditions.

6. Compliance with Conditions

- a. 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 constitute a violation of this Zoning Ordinance and be punishable accordingly. Additionally, any such violation shall be deemed a nuisance per se and subject to judicial abatement as provided by law.
- b. No permit or approval shall be granted under this Ordinance for any use or development that is contrary to an applicable Statement of Conditions.

7. Time Period for Establishing Development or Use

Unless another time period is specified in the ordinance rezoning the subject land, the approved development and/or use of the land pursuant to building and other required permits must be commenced upon the land within 18 months after the rezoning took effect and thereafter proceed diligently to completion. This time limitation may upon written request be extended by the City Council if:

- (1) it is demonstrated to the City Council'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 Council 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.

8. Reversion of Zoning

If approved development and/or use of the rezoned land does not occur within the time frame specified under Subsection 7 above, then the land shall revert to its former zoning classification as set forth in MCL 125.584g. The reversion process shall be initiated by the City Council requesting that the Planning Commission proceed with consideration of rezoning of the land to its former zoning classification. The procedure for considering and making this reversionary rezoning shall thereafter be the same as applies to all other rezoning requests.

9. Subsequent Rezoning of Land

When land that is rezoned with a Statement of Conditions is thereafter 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 8 above or otherwise, the Statement of Conditions imposed under the former zoning classification shall cease to be in effect. The City Clerk shall record with the Register of Deeds of the County in which the land is located a notice that the Statement of Conditions is no longer in effect.

10. Amendment of Conditions

- a. During the time period for commencement of an approved development or use specified pursuant to Subsection 7 above or during any extension thereof granted by the City Council, the City shall not add to or alter the conditions in the Statement of Conditions.
- b. The Statement of Conditions may be amended thereafter in the same manner as was prescribed for the original rezoning and Statement of Conditions.

11. City Right to Rezone

Nothing in the Statement of Conditions nor 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, P.A 110 of 2006 as amended.

12. 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.

F. Notice of Record of Amendment Adoption

Following adoption of an amendment by the City Council, one notice of adoption shall be filed with the City Clerk and one notice shall be published in newspaper of general circulation in the City within fifteen (15) days after adoption, in accordance with Michigan Public Act 110 of 2006, as amended. A record of all amendments shall be maintained by the City Clerk. A master Zoning Map, including all map amendments by ordinance date, shall be maintained by the City.

Section 30.04 -- FILING FEES

All applications shall be accompanied by a filing fee which shall be established by the City Council, found in Chapter 21 of the City of Midland Code of Ordinances. Upon notification of deficient payment of fees, administrative officials charged with enforcement of the Ordinance shall suspend further review of the application.

A schedule of the current filing fees and deposit requirements shall be made available in the office of the Planning and Community Development Department.