

DIVISION 4. CHANGES IN REGULATIONS OR ZONING DISTRICT BOUNDARIES

Sec. 107-516. Changes initiated by city council or commission.

The city council or commission may, from time to time, on its own motion, initiate (without payment of application or petition fee) amendments, supplements, changes, or modifications to the city's zoning regulations, boundaries or classifications. Any such proposed change will be subject to the hearings and procedures prescribed by this division.

(Code 1987, ch. 11, subch. G, art. XVII, § 1; Code 1995, § 14.02.981)

Sec. 107-517. Applications and petitions.

- (a) Any property owner (or such property owner's authorized agent) applying to or petitioning the city for a change in zoning boundaries or classifications applicable to such applicant's property shall do so upon forms provided by the city. All petitions or applications for changes in zoning boundaries or classifications shall be filed with the city together with all applicable fees.
- (b) Each such petition or application shall:
 - (1) Contain the petitioner's/applicant's name, address and interest in the petition/application; and
 - (2) Include a survey prepared by a registered surveyor in the state and a properly recorded subdivision plat which accurately shows the location and boundaries of the property for which the change is requested, the current zoning classification of the property, and the names and addresses of all owners of property lying within 200 feet of the subject property (as reflected on the current city tax roll).
- (c) The commission may make nonmandatory requests for supplemental information from the applicant or petitioner with regard to a zoning change request including, but not limited to, a preliminary plat plan of the anticipated use and improvement of the property.
- (d) A zoning change application includes a properly recorded subdivision plat of the applicable property which is the subject of such application. In lieu thereof, a property owner may simultaneously process a subdivision application to properly subdivide the property provided that the zoning change will not be approved until a subdivision plat of the property has been approved. A city council or commission initiated change does not require that the property be subject to a properly recorded subdivision plat nor does it require a survey of such property.

(Code 1987, ch. 11, subch. G, art. XVII, § 2; Code 1995, § 14.02.982)

Sec. 107-518. Hearing and notice.

- (a) The commission will hold a public hearing on all proposed changes on zoning regulations or boundaries.
- (b) Not less than 16 days prior to the hearing, notice of the date, time and location thereof will be published in the official newspaper of the city or in a newspaper of general circulation in the city. In addition, in the case of a proposed change in zoning classification, written notice of a public hearing will be mailed, not less than 30 days prior to the hearing, to all owners of property (as such ownership is shown on the current city tax

roll) lying within 250 feet of the property that is the subject of the proposed zoning classification change. If the application for a change in zoning classification requests a change to a zoning district other than residential district or park district, the notice must be mailed, not less than 30 days prior to the hearing, to all owners of property (as such ownership is shown on the current city tax roll) within the city. The notice may be served by depositing it in the U.S. mail with the proper address and postage.

(Code 1987, ch. 11, subch. G, art. XVII, § 3; Code 1995, § 14.02.983; Ord. No. 2019-08-21(D) , § 1, 8-21-2019)

Sec. 107-519. Commission recommendation.

- (a) After the public hearing, the commission will make its recommendation regarding the change in zoning regulations or boundaries.
- (b) The recommendation made by the commission will be submitted to the city council, in writing, and the applicant/petitioner will be notified of the action of the commission.
- (c) The city will establish and maintain a separate file for each petition/application received, and will record the names and addresses of all persons to whom notices were mailed, including the date of mailing and the persons by whom notices were mailed. All records and files herein provided will be made part of the official files of the city.

(Code 1987, ch. 11, subch. G, art. XVII, § 4; Code 1995, § 14.02.984)

Sec. 107-520. Procedure before the city council.

- (a) After receiving the recommendation of the commission, the city council will, at the earliest practicable time, hold a public hearing on the application/petition, at which parties in interest and citizens will have an opportunity to be heard. Notice of the hearing will be given in the manner required under section 107-518(b).
- (b) If the commission recommends approval of the change in zoning regulations or boundaries requested in the application/petition, the city council may, by majority vote, either accept, reject or take other action on the application/petition.
- (c) If the commission recommends disapproval of the change in zoning regulations or boundaries requested in the application/petition, or if there is filed with the city a written protest against such change, signed by the owners of 20 percent or more, either of the area of the lots or land included in such proposed change, or of the lots or land immediately adjoining the same and extended 200 feet therefrom, such change will not be approved except by the favorable vote of at least four/fifths of the whole number of members of the city council.
- (d) The city council may approve, at such time as a zoning change requested by a property owner (or the property owner's authorized agent) is granted, a development agreement between the city and the applicant containing such assurances as the city council may determine are reasonably necessary regarding the development of the property, including, but not limited to, development of the property substantially in accordance with a preliminary plat plan, in form reasonably satisfactory to the city council (the "development agreement"). The city council may require that the development agreement be recorded in the real property records of the county and constitute covenants running with the land. Thereafter, any requested modifications, amendments or variances to the development agreement must be considered by and receive the prior approval of the city council. All representations, whether written or oral, made by an applicant or his agent in connection with a zoning change request at any of the public hearings held in connection therewith will be binding upon such applicant and the property which is subject to the zoning

classification change. It will be unlawful for the applicant to vary or breach any of such representations without first obtaining the prior written approval of the city council.

- (e) Any change in zoning regulations or boundaries must be enacted in the form of an ordinance amending this article.
- (f) If a zoning change application filed by or on behalf of a property owner with regard to such property is denied by the city council, then a zoning application for such property requesting a change to the same zoning classification previously requested may not be filed with the city for a period of six months from the date of the prior denial by city council.

(Code 1987, ch. 11, subch. G, art. XVII, § 5; Code 1995, § 14.02.985)

Sec. 107-521. Suspending issuance of permits and approval of site plans pending amendments.

No application for site plan approval will be accepted for filing nor processed, and no building, site clearance, or grading permit will be issued for any work, other than in connection with a single-family residential use, for a period of no more than 90 days on land which is being considered for a change in zoning classification or is subject to an amendment to the zoning ordinance being considered by the city council. Such 90-day period will begin on the date the proposed zoning classification change or proposed zoning ordinance amendment is published for public hearing by the commission. Properties with respect to which building permits or final site plans have been approved prior to such date are excepted from this restriction. The time period for such restriction will expire upon the earlier to occur of expiration of such 90-day period or final determination of such zoning change or amendment by the city council. The foregoing notwithstanding, a site plan may be approved by the city council (and a building permit may be issued) simultaneously with the approval of a zoning change classification or an amendment to the zoning ordinance by the city council.

(Code 1987, ch. 11, subch. G, art. XVII, § 6; Code 1995, § 14.02.986)

Secs. 107-522—107-530. Reserved.

Board of Adjustment – Notice for Variances

Sec. 107-494. Notice of hearing.

- (a) The board shall fix a date and time to conduct a hearing on each appeal, request for a variance, application for a special exception filed with it, or other action authorized under this chapter and shall mail notices of such hearing at least 30 days before the hearing.
- (b) The notice must be mailed to the following persons at the address shown on the current tax rolls of the city and deposit of the notices in the U.S. mail will be deemed compliance with this requirement:
 - (1) The petitioner;
 - (2) The owners of the property located within 250 feet of any point of the lot, or portion thereof, with respect to which the appeal, request for a variance or application for special exception is taken;
 - (3) If the appeal, request for a variance or application for a special exception relates to a lot that is not in a residential district, all owners of property located within the city shown on the current tax rolls of the city.

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- (c) In addition to the mailed notification, a variance or special exception sign shall be placed adjacent to each public street or right-of-way, abutting the subject property, or if the property does not front a public street or right-of-way, to the closest public street or right-of-way, located in the middle of the frontage, and within three feet of the curb or the pavement, or as prescribed by the city administrator at the time of application. One sign shall be required for the first 100 feet of frontage of the tract, and, thereafter, one additional sign for every 200 feet of frontage, or fraction thereof, except that no more than three signs shall be required on each roadway frontage. If the tract has less than 200 feet of frontage per roadway, then only one sign is required per road. All signs shall be clearly visible to the public from the adjacent public streets. The applicant shall post the sign(s) at least 15 days prior to the ZBA meeting and maintain said sign(s) in good condition and in place until final action. If the sign(s) is not posted 15 days prior to the ZBA meeting, the applicant's case shall be withdrawn and rescheduled. If a sign(s) is removed from the property or damaged, the applicant shall be responsible for purchasing a replacement sign(s) and installing it immediately. The sign(s) shall be furnished by the city and a fee shall be charged the applicant per the city fee schedule. The sign shall include the name of the applicant, the variance or special exception being requested, and the date, time, and location of the public hearing.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

Notice for Special Use Permits

Sec. 107-399. Special use permits.

- (a) *Permit required.* No special use shall be established, operated, or maintained except as authorized by a special use permit approved in accordance with the requirements of this article.
- (b) *Special use permit approved by city council.* A special use permit may be approved only for the special uses specified in this article, and only for the districts wherein such uses are authorized. A special use permit may be approved by the city council acting after a public hearing and after the council has received a recommendation from the commission relative to the proposed permit.
- (c) *Application.* An application for a special use permit shall be made in writing in a form prescribed by the city secretary, and shall be accompanied by such information as may be requested (including a site plan, if required) in order to provide for proper review of the proposed use. Such information may include, but is not limited to, site and building plans, drawings and elevations, traffic plans prepared by a licensed professional engineer with experience in traffic safety that includes an analysis of traffic to be generated by the proposed use and indicates the impact on existing traffic conditions within the city, including residential areas, and provides information on the potential congestion caused by ingress and egress, and operational data.
- (d) *Report by city secretary or city inspector.* The city secretary or city inspector shall visit the site of the proposed special use and the surrounding area, and thereafter submit his written findings to the commission and the city council.
- (e) ***Notice—Public hearing by commission.***
- (1) The commission shall hold a public hearing on each application for a special use permit.
 - (2) Written notice of such hearing shall be given to the owners of all real property located within 250 feet in all directions of the property that is the subject of the hearing. Notice shall be given not less than 30 days prior to the date of the hearing either by personal service or by mailing a copy of the notice to each owner at his address shown on the current city tax roll.
 - (3) Such notice shall state the purpose, date, time, and place of the hearing, together with a brief description of the proposed development, including its nature, scope, and location. The notice shall

also describe any variances the applicant has requested and state the location and times at which the special use permit application and supporting documents are available for public inspection. The time and place of the public hearing to be held before the city council shall also be included if known at the time the notice is given and, if it is not known at such time, a telephone number shall be provided where information on the hearing before the city council will be available at a later date.

- (4) The applicant shall be responsible for drafting the notice and serving it after the notice has been approved by the city secretary as to form and content. An affidavit of proof of service shall be filed by the applicant with the city secretary prior to the hearing.

(f) *Review and recommendation of the commission.*

- (1) The commission shall review each application for a special use permit to determine whether the proposed special use complies with each of the general criteria in section 107-400, and with each of the specific criteria in section 107-401 applicable to the proposed use, and shall make a separate finding thereon for each criterion.
- (2) The commission shall not recommend approval of an application unless it finds that the proposed special use as presented or as modified by the commission complies with each applicable general and specific criterion. A recommendation of approval may be conditioned on the applicant's adoption of specified changes, additions, limitations, safeguards, or effective time periods designed to ensure compliance with the criteria.
- (3) The commission shall forward its findings and recommendations to the city council in writing.

(g) *Hearing before city council.* The city council shall review an application for a special use permit at a public hearing after receiving the findings and recommendations of the commission.

(h) *Review and action by city council.*

- (1) The city council shall determine whether the proposed special use complies with each of the general criteria in section 107-400 and with each of the special criteria in section 107-401 applicable to the proposed use, and shall make separate findings thereon or adopt the findings made by the commission.
- (2) The city council may condition its approval of an application on the applicant's adoption of specified changes, additions, limitations, safeguards, or effective time periods designed to ensure compliance with the criteria.
- (3) The city council shall not grant a special use permit unless it finds that the proposed special use, as presented or as modified by the council, complies with each applicable general and specific criterion; otherwise it shall deny the application.

(Code 1987, ch. 11, subch. G, art. XII, § 3; Code 1995, § 14.02.703; Ord. No. 2009-05-07B, §§ 4, 5, 5-7-2009)