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24-101 Who May Petition or Apply:

Applications for amendments, revisions or changes in the Zoning District Boundary Maps in effect for Marion County, Kansas, or for a Conditional Use Permit as authorized by Article 19, may be made by any person who owns the land for which such an amendment, revision, change or Conditional Use Permit is sought, or by the owner's agent as defined by these Regulations. If such application is made by the owner's agent, said 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 said owner prior to the setting of any public hearing. Applications for amendments, revisions or changes to the Zoning Regulations, the Zoning District Boundary Maps and/or Conditional Use Permits may also be made by the Planning Commission or the Governing Body; provided, such proposed amendments, revisions, changes, or Conditional Use shall first be submitted to the Planning Commission for public hearing, recommendation and report and the final decision is made by the Governing Body.

24-102 Procedures for Consideration of Request for Amendments, Revisions or Changes:

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 the application fee, as established by the Governing Body by separate resolution, 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 his agent, and the payment of the appropriate fee, the Zoning Administrator shall note thereon the date of filing and make a permanent record thereof. An application shall be deemed complete when the Zoning Administrator has received: a completed application form, any required development plan, the application fee, and such other documents necessary to process the application without further delay.

If the application concerns property located within the notification area of any city within Marion County as specified in Section 24-103 herein then the application shall be submitted to that city as specified herein. Upon expiration of the review and comment period for said city as specified in Section 24-103, the Zoning Administrator may then process the application hearing by the Marion County Planning Commission.

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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 thereon and shall cause a written summary to be made of the proceedings. Notice of such hearing shall be published once in the official county newspaper at least 20 days prior to the date of the hearing. Said notice shall fix the time and place for such hearing, shall give the name and address of the applicant, and shall contain a statement regarding the proposed changes in regulations or restrictions, or in the boundary or classification of any zone or district, or the requested Conditional Use.

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 a general description sufficient to identify the property under consideration. In addition to such publication notice, written notice of such proposed rezoning and/or Conditional Use shall be mailed by First Class U.S. mail, postage prepaid, at least 20 days before the public hearing to all owners of record of lands located within at least 1,000 feet of the area proposed to be altered; provided, said notice shall extend only 200 feet in those areas where the notification area extends within the corporate limits of a 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 or Governing Body. Upon special direction, the applicant shall provide a certified list of the owners of record of said lands at the time of the filing of the application, otherwise the Zoning Administrator shall compile said list from the records of Marion County, Kansas.

In the case of an application by the Planning Commission or the Governing Body, all the above stated requirements shall be followed except no fee shall be required. 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.

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 same, 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 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 such hearing may, for good cause at the request of the applicant, or in the discretion of the Planning Commission, be continued.

When the Planning Commission submits a recommendation of approval or disapproval of such amendment, revision, change or Conditional Use Permit and the reasons therefore, the Governing Body may: 1) adopt such recommendation by resolution; 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. If the Governing Body returns the Planning Commission's recommendation, the Planning Commission, after considering the same, may resubmit its original recommendation giving the reasons therefore or submit a new and amended recommendation. Upon the receipt of such recommendation, the Governing Body, by a simple majority thereof, may adopt, may

revise or amend and adopt, or may disapprove such recommendation by resolution, or it need take no further action thereon. If the Planning Commission fails to deliver its recommendation to the Governing Body following the Planning Commission's next regular meeting after receipt of the Governing Body's report, the Governing Body shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly. The proposed amendment, revision, change, or Conditional Use Permit, if approved with or without conditions, shall become effective upon publication of the adopting resolution.

If such amendment or Conditional Use Permit affects the boundaries of any zone or district, the resolution shall describe the boundaries as amended, or if provision is made for the fixing of the same upon the official maps which has been incorporated by reference, the amending resolution 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 resolution incorporating the same and shall reincorporate such maps as amended.

Regardless of whether or not the Planning Commission approves or disapproves a proposed zoning amendment, supplement, change, or Conditional Use Permit, if a protest against an amendment, supplement, change or Conditional Use Permit is filed in the office of County Clerk within 14 days after the date of the conclusion of the public hearing pursuant to the publication notice, duly signed and acknowledged by the owners of record of 20 percent or more of any property proposed to be rezoned, or by the owners of record of 20 percent or more of the total area required to be notified of the proposed amendment, supplement, change or Conditional Use of a specific property, excepting public streets and highways, the resolution of approval shall not be passed except by three-fourths majority vote of the Governing Body.

24-103 Referral of Amendments to Cities:

In order to protect the area around all incorporated cities within Marion County from untimely, premature, or inappropriate development, all proposed changes in a zoning district (rezonings) or requests for a Conditional Use Permit within the unincorporated portion of Marion County and within the designated notification area of all cities within Marion County, if such notification area is established, shall be submitted to said city for official review and recommendation. Written notice of such proposed rezoning and/or Conditional Use shall be mailed by First Class U.S. mail, postage prepaid, at least 20 days before the public hearing.

The City Notification Area for each participating city shall be illustrated by maps prepared by the county. Maps of said City Notification Areas are provided in Appendix A of the Zoning Regulations.

The City Notification Areas may be revised by the County Commission, or by mutual agreement with each participating city, at any time following a public hearing conducted by the Marion County Planning Commission. Upon written request of the city, or a request by the Board of County Commissioners, the Zoning Administrator shall establish a time and date for a hearing before the Marion County Planning Commission, and will notify the mayor or planning commission of any affected city, the Marion County Planning Commission, and the Board of County Commissioners of the date, time, and place of said hearing. After consideration of the evidence and arguments presented at the hearing, the Marion County Planning Commission shall recommend approval, approval with modifications, or disapproval of the proposed change to the City Notification Areas. The action of the County Commission on any proposed change to a City Notification Area boundary shall be final.

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The Zoning Administrator shall submit the application, along with all supporting documentation and any development plans, to the appropriate city once the application has been determined to be complete. Said city may review such proposed rezoning or Conditional Use request and, prior to review by the Marion County Planning Commission, may submit an official written recommendation regarding said application to the Marion County Planning Commission for its consideration; or may appear before the Marion County Planning Commission and present its recommendation in person; or may elect to make no comments regarding said request. Any recommendation submitted may be from either the Planning Commission or the Governing Body, whichever said city so chooses. If the city does not respond regarding an application within thirty (30) days it will be considered a de facto recommendation of approval; provided, however, representatives of the city may still appear at any public hearing or meeting regarding the proposed rezoning and present comments or testimony, as can any member of the public.

Notwithstanding any other provision of these Regulations or of state law; and in addition to all other rights granted to the applicant and to adjoining landowners; in the event a participating city recommends that a rezoning or Conditional Use proposed within said City Notification Areas be denied before thirty (30) days following notification of the city of the proposed rezoning; then a resolution of approval of such request shall not be passed except by three-fourths majority vote of all members of the Board of County Commissioners; provided, however, if the Board of County Commissioners returns the case to the Marion County Planning Commission for further consideration, upon return to the County Commission approval shall only require a simple majority vote.

24-104 Factors to be Considered:

1. 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 applicant's 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; provided, the use of land for agricultural purposes shall be considered as viable use of the land and not be considered as allowing the land to be vacant or undeveloped;
 - H. Whether adequate sewer and water facilities, and all other needed public services including transportation, 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 permanent or professional staff;
 - K. Whether the proposed amendment would be in conformance to and further enhance the implementation of the 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 a reclassification; and,
 - M. Such other factors as may be relevant from the facts and evidence presented in the application.
2. 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 permitted 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.

In approving a Conditional Use, the minimum requirements of approval for all similar types of permitted uses in the same district must be met unless otherwise reduced by specific reference in the recommendation of the Planning Commission or the approval of the Governing Body. The requirements may be made more stringent if there are potentially injurious effects which may be anticipated upon other property and the neighborhood or contrary to the welfare and convenience of the public.

The Planning Commission may recommend approval of a Conditional Use, and the Governing Body may approve such Conditional Use, using the following factors as guidelines:

- 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 transportation and service facilities in the area affected and, if so, whether such additional transportation and service facilities 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; provided, the use of land for agricultural purposes shall be considered as viable use of the land and not be considered as allowing the land to be vacant or undeveloped;
- F. Whether the applicant's property is suitable for the proposed use;
- G. The recommendations of permanent or professional staff;
- H. Whether the proposed Conditional Use would be in conformance to and further enhance the implementation of the Comprehensive Plan;
- I. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed on the applicant by not upgrading the value of the property by approving the proposed Conditional Use; and,
- J. Whether the proposed Conditional Use, if it complies with all the conditions upon which the approval is made contingent (as authorized in Article 22 of these Regulations), will not adversely affect the property in the area affected.
- K. Such other factors as may be relevant from the facts and evidence presented in the application.

24-105 Traffic and/or Other 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 or Governing Body, substantially change traffic patterns, create traffic congestion, and/or have a perceived impact on the community of such magnitude warranting special study, either the Marion County Planning Commission or Governing Body may require that the applicant procure the services of a competent professional consultant or expert for the purpose of preparing such traffic and/or other studies deemed necessary.

A traffic study must address how the traffic generated by the proposed development will be handled on the site; how vehicular ingress and egress from the site onto public roads will function; and, show that no undue burden will be placed upon the existing public road system. The study shall include recommendations of the on-site and off-site improvements necessary to achieve appropriate levels of traffic safety.

The other studies shall address the substance of the concern and/or impacts and shall identify the extent of such impacts and any and all mitigation remedies possible to lessen those impacts on the neighborhood and/or citizens and taxpayers of Marion County, Kansas.

The results of the traffic study and/or other studies 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, including requirements of construction and/or installation of the recommended improvements outlined with the traffic study or such other studies.

24-106 Limitations on Reapplication for Amendments:

Whenever an application for amendment, supplement, change, rezoning or Conditional Use Permit has been denied by the Governing Body, such application or one substantially similar shall not be reconsidered sooner than one (1) year after the said denial.