

ARTICLE XV

AMENDMENTS

PART 1. GENERAL PROVISIONS

15-101. Authority. These regulations, and the districts created under the authority of these regulations, may be amended from time to time by ordinance duly enacted by the Governing Body of the City of Manhattan. No such amendment shall be adopted except in accordance with the procedures of Kansas Statutes, and this Article.

15-102. Proposal of Amendment. A proposal for amendment may be initiated by the Governing Body of the City or the Manhattan Urban Area Planning Board, hereinafter known as the Planning Board. If such proposed amendment is not a general revision of the existing regulations and affects specific property, the amendment may also be initiated by application of the owner, or the owner's representative, of the property affected.

15-103. Application for Amendment.

(A) When the owner of the property affected proposes a change in the zoning classification of such property, an application for such amendment, addressed to the City Governing Body, shall be filed with the Planning Board. The Governing Body may establish reasonable fees to be paid in connection with such application. Such fees shall be paid in advance by the owner of any property at the time of making application for a zoning amendment. The application shall be made on a form provided by the City. Such application shall contain information as requested by Staff, Planning Board, or the Governing Body.

(B) No application for amendment to change the zoning classification of any lot, parcel or tract of land shall be accepted unless such lot, parcel or tract has 100 feet of frontage on a public street, or has 10,000 square feet of area, or abuts a lot, parcel or tract of land that has the same zoning classification as that which is proposed for the property which is the subject of the proposed amendment.

PART 2. HEARINGS

15-201. Public Hearing. The Planning Board shall conduct a public hearing on each proposed amendment within sixty (60) days of receipt of a complete application; however, such hearing may be postponed for just cause.

15-202. Notice of Hearing.

(A) Public notice of the hearing conducted by the Planning Board, pursuant to

Section 15-201, on a proposed amendment shall be published once in the official City newspaper. At least twenty (20) days shall elapse between the date of such publication and the date set for such hearing. Such publication notice shall state the date, time and place of the hearing and shall contain a statement regarding:

- (1) the proposed change in these regulations; or
  - (2) the proposed change in the zoning classification of any specific property; or
  - (3) the proposed change in the zoning district boundaries of any specific property.
- (B) If the proposed amendment would change the zoning classification of any specific property or the boundaries of any zoning district, such publication notice shall contain the legal description or a general description sufficient to identify the property under consideration, the street address or general street location of such property, its present zoning classification, and the proposed classification. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available. When a proposed amendment will affect the zoning classification of specific property, in addition to such publication notice, written notice of the proposed amendment shall be mailed at least twenty (20) days before the hearing to all owners of record of real property within the area to be altered and to all owners of record of real property located within 200 feet of the area proposed to be altered. If the zoning amendment is proposed for property located adjacent to or outside the City's limits, the area of notification shall be extended to 1,000 feet in the unincorporated area.
- (C) Whenever five (5) or more property owners of record owning ten (10) or more contiguous or noncontiguous lots, tracts, or parcels of the same zoning classification initiate a rezoning of their property from a less restrictive to a more restrictive zoning classification, such amendment shall require notice by publication, as required in Subsection (A) and (B) of this Section. Such zoning amendment shall also require the hearing provided by Section 15-201. Such zoning amendment shall not require written notice.
- (D) Whenever the City initiates a rezoning from a less restrictive to a more restrictive zoning classification of ten (10) or more contiguous or noncontiguous lots, tracts or parcels of the same zoning classification having five (5) or more owners of record, such amendment shall require notice by publication, in like manner as required by Subsection (A) and (B) of this Section. Such amendment shall also require the hearing provided in Section 15-201. In addition, written notice shall be required to be mailed, but only to such owners of record of the properties to be rezoned.

15-203 Posting of Signs for Public Hearing Involving Specific Property.

- (A) When a proposed amendment will affect the zoning classification of specific property, the applicant shall place a sign(s) on the property informing the general public of the public hearing regarding the property, conducted by the Planning Board, pursuant to Section 15-201. The sign(s) shall be placed in such location(s), and numbers, as determined by the Zoning Administrator, so as to reasonably notify the public of such hearing. If more than one tract is the subject of such hearing, the sign(s) may be required on such tracts as deemed necessary by the Zoning Administrator. When such a proposed amendment is proposed by the Planning Board of Governing Body, no such sign(s) shall be required to be posted. The Zoning Administrator may waive the requirement to post a sign(s), in cases where a tract of land is not accessible to the public's view or when the number of tracts, lots or parcels are of such number as to be impractical, such as when entire blocks are proposed to be rezoned.
- (B) The applicant shall file an affidavit with the Zoning Administrator on the day of the public hearing verifying that the sign has been maintained and posted as required by this paragraph. The sign may be removed at the conclusion of the public hearing and must be removed by the applicant at the end of all proceedings on the application or upon withdrawal of the application. Failure to post the sign(s) in accordance with these procedures, or failure to submit the affidavit prior to the hearing may result in a delay of the public hearing.

15-204 Conduct of Hearing. The hearing shall be conducted according to such procedures as the Planning Board may from time to time prescribe by rule. An accurate written summary of the proceedings shall be maintained and preserved.

PART 3. REPORT ON PROPOSED AMENDMENT

15-301. Report by Planning Staff. Prior to the public hearing, the Staff of the Planning Board shall prepare a report on the proposed amendment and shall submit the report to the Planning Board at the public hearing. A copy of this report shall also be made available to the owner or representative of the owner of the specified property affected by the proposed amendment. Such report may contain a recommendation as to whether the proposed amendment should be adopted and shall contain specific written determinations on the items listed in Section 15-302 or 15-303, whichever is applicable, and on such other items as the Planning Board or Staff may consider relevant.

15-302. Amendments to Text. When a proposed amendment would result in a change in the text of this ordinance but would not result in a change of zoning classification of any specific property, the report of the Planning Staff shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the

following items:

- (A) Whether such change is consistent with the intent and purpose of this ordinance;
- (B) The areas which are most likely to be directly affected by such change and in what way they will be affected; and
- (C) Whether the proposed amendment is made necessary because of changed or changing conditions in the areas and zoning districts affected, or in the City Planning Area generally, and, if so, the nature of such changed or changing conditions; and
- (D) Whether such change is consistent with the intent and purpose of the policies and goals as outlined in the adopted Comprehensive Plan of the City.

15-303. Amendments to Change Zoning Districts. When a proposed amendment would result in a change of the zoning classification of any specific property, the staff report of the Planning Staff shall contain information addressing all factors set forth in Section 15-403(A).

#### PART 4. ACTION BY THE PLANNING BOARD AND CITY GOVERNING BODY

15-401. Adoption of Amendments. At the conclusion of the public hearing on a proposed amendment, the Planning Board shall, by a vote of members present, determine what recommendation to forward to the Governing Body.

- (A) A majority of the members of the Planning Board present and voting at the hearing shall be required to recommend approval or denial of the amendment to the Governing Body, except that if the Planning Board fails to make a recommendation on a zoning request, the Planning Board shall be deemed to have made a recommendation of disapproval.
- (B) The Planning Board's recommendation shall be submitted to the Governing Body along with a copy of the staff report and a copy of the written summary of the hearing on the proposed amendment. Upon receipt of a recommendation from the Planning Board, the Governing Body may:
  - (1) adopt such recommendation by ordinance; or
  - (2) override the Planning Board's recommendation by a two-thirds (2/3) majority vote of the membership of the Governing Body; or
  - (3) return such recommendation to the Planning Board with a statement specifying the basis for the Governing Body's failure to approve or disapprove.

- (C) If the Governing Body returns the Planning Board's recommendation, the Planning Board, after consideration of the same, may resubmit its original recommendation, giving the reasons therefore or submit a new and amended recommendation. If the Planning Board fails to deliver its recommendation to the Governing Body following the Planning Board's next regular meeting after receipt of the Governing Body's report, the Governing Body may consider such course of inaction on the part of the Planning Board as a resubmission of the original recommendation and proceed accordingly.
- (D) Upon receipt of such recommendation as required by Section 15-401(C), the Governing Body, by simple majority thereof, may adopt, or may revise or amend and adopt, such recommendation by ordinance, or it need take no further action thereon. In all cases the Governing Body must consider such recommendation and address the matters required by Section 15-403, even if they take no further action thereon.

15-402. Protest Petition.

- (A) Regardless of whether or not the Planning Board recommends approval or disapproval of a zoning amendment, if a valid 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 which was commenced pursuant to the publication notice, the ordinance adopting such amendment shall not be passed except by at least a 3/4 vote of all the members of the Governing Body. Such protest petition, in order to be valid, shall be signed by all owners of record of twenty percent (20%) or more of any real property proposed to be rezoned, or by all the owners of record of twenty percent (20%) or more of the total real property within the area required to be notified of the proposed rezoning of a specific property, excluding streets and public ways and property excluded pursuant to Subsection (B) of this Section. Owners of record shall mean any person or entity who is reflected as the most recent owner or owners of property as documented in the (1) Riley County Register of Deeds, or (2) Riley County District Court, or (3) Pottawatomie County Register of Deeds, or (4) Pottawatomie County District Court, or any combination thereof.
- (B) For the purpose of determining if a protest petition is valid, if the proposed zoning amendment was requested by the owner of the specific property subject to the rezoning, or the owner of the specific property subject to the rezoning does not oppose in writing such zoning amendment, such property also shall be excluded when calculating the "total real property within the area required to be notified" as that phrase is used in Subsection (A) of this Section.

- (C) Zoning amendments as described in Section 15-202 (C) shall not be subject to the protest petition provisions in Subsection (A) of this Section.
- (D) In cases involving rezoning of properties as described in Section 15-202 (D), only such owners of record of the properties to be rezoned shall be eligible to initiate a protest petition under Subsection (A) of this Section.

15-403. Matters to be Considered When Changing Zoning Districts.

- (A) Whenever the Planning Board or the Governing Body acts upon a proposed amendment to the Zoning Ordinance that is not a general revision of existing regulations and affects specific property, they shall address the following matters:
  - (1) the existing use of the property;
  - (2) the physical and environmental characteristics of the property;
  - (3) the zoning and land uses of nearby properties;
  - (4) the suitability of the subject property for the land uses to which it is restricted under current zoning;
  - (5) the character of the neighborhood;
  - (6) the compatibility of the proposed zoning district with nearby properties and the extent to which it may detrimentally affect those properties;
  - (7) the conformance of the requested change to the adopted Comprehensive Plan for the City of Manhattan. (If the proposed amendment is in accordance with said Comprehensive Plan, it shall be presumed to be reasonable.);
  - (8) the zoning history of the subject property and the length of time it has remained vacant as zoned;
  - (9) whether the proposed district would be consistent with the intent and purpose of these regulations;

- (10) the relative gain to the public health, safety and welfare that a denial of the proposed amendment would accomplish, compared with the hardship imposed upon the individual owner that would result from such denial;
  - (11) whether adequate sewer and water facilities, streets and other needed public services exist, or can be provided to serve the uses that would be permitted by the proposed zoning district;
  - (12) the recommendations of permanent or professional staff; and
  - (13) such additional matters as may apply in individual circumstances.
- (B) In addition to the matters set forth in subparagraph (A), the Governing Body shall also consider the recommendation of the Planning Board.
- (C) In approving or disapproving such a proposed amendment, the Planning Board and the Governing Body shall set forth, on the record, their reasons for such action, as they pertain to each of the matters set forth above. Such Bodies may incorporate, as their reasons, any information contained in the report of the Planning Staff prepared pursuant to Section 15-303. The failure of the Planning Board or Governing Body to specifically address any matters set forth above shall raise the presumption that their reasons, as to the matter, are as contained in said report.