

SECTION 27

AMENDMENTS

27-010 WHO MAY PETITION OR APPLY

Applications for amendments, revisions or change in the Zoning District Map or Zoning Regulations in effect for the City of Tonganoxie may be made by any person who owns the land sought to be rezoned or an agent, as defined by these regulations, provided that such is not a general revision of the existing regulations and provided that it affects specific property. If such application is made by the owner's agent, the agent must attach a letter signed and notarized by the owner or other legal documentation authorizing that person as the owner's agent.

Recommendations for amendments, revisions or changes to the Zoning Regulations or Zoning District Boundary Map may also be made by the Tonganoxie City Planning Commission on its own motion, for final determination by the City Council. Likewise, the City Council may amend the Zoning Regulation or the Zoning District Boundary Map upon its own motion, provided, however, that such proposed amendments shall first be submitted to the Planning Commission for recommendation and report.

27-011 PROCEDURES FOR CONSIDERATION OF REQUEST FOR AMENDMENTS, REVISIONS OR CHANGES

All applications or requests for amendments, revisions or changes to the zoning Regulations of Zoning District Boundary Map shall be filed with the City Clerk on such forms as provided in conformance therewith. All such proposed amendments first shall be submitted to the Planning Commission for recommendation. Upon receipt of an application for rezoning or for a special use permit by the owner or the owner's agent of a particular tract of land the payment of the appropriate fee, as established by the City council, the City Clerk shall note thereon the date of filing and make a permanent record thereof. Recommendations for amendments, revisions or changes to the Zoning Regulations or Zoning District Boundary Map by the City Planning Commission or the City Council, the City Clerk shall note thereon the date of filing and make a permanent record thereof. No filing fees shall be assessed for recommendations for amendment, revision or change by the Tonganoxie City Planning Commission or the City Council

All such proposed amendments first shall be submitted to the Planning Commission for recommendation. All such applications shall be set for hearing before the Planning Commission not later than sixty (60) days after receipt of a fully completed application if by an owner or the owner's agent of a particular tract of land.

The Planning Commission shall hold a public hearing thereon, and shall cause an accurate written summary to be made of the proceedings.(Ordinance #967 11/9/99) Notice of such hearing shall be published not less than twenty (20) days prior to the date of said hearing in the official city newspaper of the City of Tonganoxie, Kansas.

In addition to the 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 land located within at least two hundred (200) feet of the area proposed to be altered. Such notice shall fix the time and place for the hearing and contain a statement regarding the proposed changes and regulations or restrictions or in the boundary of any classification of any zone or district. If such proposed amendment is not a general revision of the existing regulations and affect specific property, the property shall be designated by legal description or a general description sufficient to identify the property under consideration. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate that such information is available at the office of the City Clerk. 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 the Governing Body. Such notice shall be deemed sufficient to permit the Planning Commission to recommend amendments to Zoning Regulations which affect only a portion of the land described in the notice or which give all or any part of the land described a zoning classification that is more restrictive than that set forth in the notice. A recommendation of a zoning classification that is more restrictive than that set forth in the notice shall not be valid without republication and, where necessary, another mailing, unless the Planning Commission has previously established a table or publication available to the public which designates what zoning classification or more restrictive changes are authorized.

The applicant shall provide a list of the owners of record of said properties within the two-hundred (200) feet of the area proposed to be altered at the time of the filing of the application. If the property for alteration is located adjacent to the City limits, the area of notification shall be extended to one-thousand (1,000) feet in the unincorporated area. The applicant shall furnish proof that he or she is the owner of record, or the owner's agent. The list of owners may be obtained from Leavenworth County, or a certified list shall be provided by a licensed abstractor/title company. (Amended by Ordinance # 1186 5/23/05)

At any public hearing held to consider a proposed rezoning, an opportunity shall be granted to interested parties to be heard.

Any amendment, if in accordance with the City of Tonganoxie Land Use Plan or the Land Use Element of the City of Tonganoxie Comprehensive Plan, shall be presumed to be reasonable. The following matters shall be considered when approving or disapproving a rezoning request:

- a. The character of the neighborhood;
- b. The compatibility with the zoning and uses of properties nearby;
- c. The suitability of the subject property for the uses to which it has been restricted;

- d. The extent to which removal of the restrictions will detrimentally affect nearby property;
- e. The length of time the subject property has remained vacant as zoned;
- f. The gain if any, to be public health, safety and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application; (Amended by Ordinance # 1184 5/9/05)
- g. The adequacy of public utilities and infrastructure; (Amended by Ordinance #1184 5/9/05)
- h. Recommendations of permanent or professional staff; (Amended by Ordinance #1184 5/9/05)
- i. Conformance of the requested change to the adopted or recognized comprehensive plan of Tonganoxie, KS: (Amended by Ordinance # 1184 5/9/05)

27-012 ACTION BY THE PLANNING COMMISSION AND THE GOVERNING BODY

- a. A majority of the members of the Planning Commission present and voting at the hearing shall be required to recommend approval or denial of the amendment to the governing body. If the planning commission fails to make a recommendation on a rezoning request, the planning commission shall be deemed to have made a recommendation of disapproval. When the planning commission submits a recommendation of approval or disapproval of such amendment and the reasons therefore, governing body may: (1) Adopt such recommendation by ordinance; (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 new and amended recommendation. Upon receipt of such recommendation, the governing body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendation by the respective ordinance or 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 rezoning shall become effective upon publication of the adopting ordinance or resolution.
- b. If such amendment affects the boundaries of any zone or district, the respective ordinance or resolution shall describe the boundaries as amended, or if provision is

made for the fixing of the same upon the official map which has been incorporated by reference, the amending ordinance or resolution shall define the change or the boundary as amended, shall order the official map to be changed to reflect such amendment, shall amend the section of the ordinance or resolution incorporating the same and shall reincorporate such map as amended.

- c. Regardless of whether or not the planning commission approves or disapproves a zoning amendment, if a 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 before the Planning Commission pursuant to the publication notice, signed by the owners of record of 20% or more of any real property proposed to be rezoned or by the owners of record of 20% or more of the total area required to be notified by this act of the proposed rezoning of a specific property, excluding streets and public ways, the ordinance or resolution adopting such amendment shall not be passed except by at least 3/4 vote of all of the members of the governing body.
- d. In its discretion the Planning Commission may provide for additional notice by providing for the posting of signs on land which is the subject of a proposed rezoning, for the purpose of providing notice of such proposed rezoning

27-013 LIMITATIONS ON REAPPLICATION FOR AMENDMENTS

Whenever an application is requesting an amendment, supplement, change or rezoning and has been denied by the City Council, such application shall not be reconsidered sooner than six (6) months after the previous denial.

27-014 ACCOMPANYING DATA

An application for an amendment shall be accompanied by:

- a. A drawing to scale showing the boundaries of the property, the existing street and utilities presently serving the property, the proposed new streets and utilities to serve the property and the dimensions and location of the improvements.
- b. A copy of the deed showing fee simple title in the owner of record.
- c. In applicable cases, a letter signed and notarized by the owner or other appropriate legal documentation authorizing the person as an agent.
- d. A certified list (provided by a licensed abstractor/title company) of the property owners located within two hundred (200) feet of the area proposed to be altered or rezoned. Any error in the list of property owners will result in reapplication accompanied by a second application fee to be paid by the applicant and a new public hearing.