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§10-1-1 AUTHORITY TO AMEND

The Governing Body may from time to time amend the number, shape, boundary, or area of the land use intensity district map, or it may amend any Resolution [Ordinance] or individual section of this code. The procedure for amending the land use intensity district map and amendment to any Resolution [Ordinance] or section contained in this code shall be as provided herein.

§10-1-2 INITIATION OF AMENDMENT

A petition to amend this code or the land use intensity district map, or an application for a conditional use permit, may be initiated by the Governing Body, the planning commission, or by any person, firm, or corporation owning property in the local jurisdiction. The property owner's permission is required before a petition for changing the land use intensity district map can be filed by anyone other than the governing body or the planning commission. Applications for amendment to the land use intensity district map or the text of this code shall be accompanied by payment of a filing fee as established by the Governing Body by Resolution [Ordinance] from time to time.

§10-1-3 PRE-APPLICATION CONFERENCE

Prior to the filing of any application to amend the text of this code, the land use intensity district map, or any other application pursuant to this code, applicants are encouraged to schedule and attend a pre-application conference with the Land Use Officer. The purpose of the pre-application conference is to provide applicants with the best available information regarding development proposals and processing requirements, and to ensure the availability of complete and accurate information for review of said application. Upon request of the applicant, the Land Use Officer shall provide the applicant with a written summary of the pre-application conference and list any specific documents, information, or other information that must be submitted to satisfy application requirements.

§10-1-4 MAP AMENDMENT APPLICATION REQUIREMENTS

Each application for a map amendment or conditional use permit shall be accompanied by a legal description of the property and a survey plat of the property, a letter of intent describing the proposed use of the property, an application form supplied by the Land Use Officer, a filing fee as specified from time to time by Resolution [Ordinance] of the Governing Body, and any other information as may be required by this code or as specified by the Land Use Officer to evaluate compliance with this code.

§10-1-5 COMPLETE APPLICATION

Any application for action under this code must be complete before it shall be accepted for processing. Upon receipt of all application materials, the Land Use Officer shall find the application complete and schedule it for hearing, where required, and consideration.

§10-1-6 PUBLIC HEARING

Within no more than 60 days after the filing of a complete application for which a hearing is required by this code, a public hearing shall be held on such applications before the appropriate body as required by and in accordance with this code, before taking action on a proposed application.

§10-1-7 PUBLIC HEARING NOTICE

For any proposed text amendment to this code, any application for a map amendment, and any application for a conditional use permit, a public notice shall be published in a newspaper of general circulation in the local jurisdiction at least 15 days, but not more than 45 days prior to the scheduled public hearing. Such notice shall state the purpose, location, time and date of the public hearing, and the nature of said application. For map amendments initiated by a party other than the County [City], the public notice shall specifically include the location of the property, the current use district classification of the property, and the proposed use district classification of the property. For conditional use applications, the public notice shall specifically include the proposed use of the subject property and the current use district classification of the property.

[See Commentary]

§10-1-8 PUBLIC NOTICE SIGN ON SUBJECT PROPERTY

Whenever a map amendment or an application for conditional use is proposed by a party other than the County [City], the Land Use Officer shall post a sign not less than 15 days prior to the date of the public hearing in a conspicuous place on said property, which shall be not less than 12 square feet in area, and which shall contain information as to the proposed change and the date, time and location of the public hearing before the Public Hearing Body. For map amendments, the sign shall specifically include the current use district classification of the property and the proposed use district classification of the property. For conditional use applications, the sign shall specifically include the proposed use of the subject property and the current use district classification of the property.

§10-1-9 CRITERIA TO CONSIDER FOR MAP AMENDMENTS

In reviewing, recommending, and acting upon applications for map amendments, the Land Use Officer, the Planning Commission, and the Governing Body shall consider the following criteria for approval, conditional approval, or disapproval as appropriate:

§10-1-9.1 Compatibility with Adjacent Uses and Districts. Existing uses and use districts of surrounding and nearby properties, whether the proposed use district is suitable in light of such existing uses and use districts of surrounding and nearby properties, and whether the proposal will adversely affect the existing use or usability of adjacent or nearby properties.

§10-1-9.2 Property Value. The existing value of the property contained in the petition under the existing use district classification, the extent to which the property value of the subject property is diminished by the existing use district classification, and whether the subject property has a reasonable economic use under the current use district.

§10-1-9.3 Suitability. The suitability of the subject property under the existing use district classification, and the suitability of the subject property under the proposed use district classification of the property.

§10-1-9.4 Vacancy and Marketing. The length of time the property has been vacant or unused as currently used under the current use district classification; and any efforts taken by the property owner(s) to use the property or sell the property under the existing use district classification.

§10-1-9.5 Evidence of Need. The amount of undeveloped land in the general area affected which has the same use district classification as the map change requested. It shall be the duty of the applicant to carry the burden of proof that the proposed application promotes public health, safety, morality or general welfare.

§10-1-9.6 Public Facilities Impacts. Whether the proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, schools, parks, or other public facilities and services.

§10-1-9.7 Consistency with Comprehensive Plan. Whether the proposal is in conformity with the policy and intent of the locally adopted comprehensive plan.

§10-1-9.8 Other Conditions. Whether there are any other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the proposal.

§10-1-10 CRITERIA TO CONSIDER FOR CONDITIONAL USES

In reviewing, recommending, and acting upon applications for conditional uses, the Land Use Officer, the Planning Commission, and the Governing Body shall consider the following criteria for approval or disapproval as appropriate.

- (a) Access to the site is appropriate considering the anticipated volume of traffic resulting from the use
- (b) The amount and location of open space and the provision of screening is such that buffering of incompatible uses is achieved.
- (c) Hours and manner of operation of the proposed use are not inconsistent with the adjacent or nearby uses.
- (d) Public facilities and utilities are capable of adequately serving the proposed use.
- (e) The proposed use will not have a significant adverse effect on the level of property values or the health, safety and general welfare and character of adjacent land uses or the general area.

- (f) The physical conditions of the site, including size, shape, topography and drainage, are suitable for the proposed development.
- (g) The proposed use is consistent with the goals and objectives of the comprehensive plan.
- (h) Whether or not all pertinent and applicable requirements of this code, as well as all applicable state and federal laws have been met.
- (i) Any other factors deemed relevant to the Land Use Officer, Planning Commission, or Governing Body.

§10-1-11 STAFF INVESTIGATION AND REPORT

The Land Use Officer shall make an investigation of the application and shall prepare a report thereon, considering applicable criteria specified herein. Said investigation shall be submitted to the Planning Commission and Governing Body, in cases where they have a role in the application as specified herein. Said investigation shall also be made available to the applicant prior to any public hearing scheduled on the matter or in cases where a public hearing is not required, within a reasonable time period prior to action.

§10-1-12 PLANNING COMMISSION REVIEW AND RECOMMENDATION

The Planning Commission shall consider all applications to the text of this code, applications to amend the land use intensity district map, and applications for conditional use permits. It shall render a recommendation to the Governing Body on all such applications, and the Planning Commission's action and recommendation shall be only advisory. The Planning Commission shall hold a public hearing on all such specified applications and shall conduct its review in accordance with the procedures established herein. The Planning Commission may recommend approval, approval with conditions, or denial of the application. The Planning Commission shall render a recommendation following the close of the public hearing or within 32 days after the public hearing on the application has been held. The Land Use Officer shall notify the applicant in writing of the Planning Commission's action or recommendation within five days of the conclusion of the public hearing and within five days of its recommendation, if not made at the public hearing.

§10-1-13 PROCEDURES FOR CONDUCTING PUBLIC HEARINGS

This section establishes procedures which shall, unless the context specifically indicates otherwise, be applicable to the Board of Commissioners [Mayor and City Council] and Planning Commission (hereafter referred to as the "Public Hearing Body") in the conduct of all public hearings. Public hearings as are herein required shall be governed by the following policies and procedures for conducting public hearings, and the Public Hearing Body shall follow such policies and procedures for the conduct of public hearings, except in cases where it is prudent to dispense with formalities in such cases where due process of the applicant or interested parties will be unaffected. Nothing contained herein shall be construed as prohibiting the Public Hearing Body from conducting the public hearing in an orderly and decorous manner to assure the public hearing on a proposed application is conducted in a fair and orderly manner. These rules shall be public record and shall be made available at the public hearing.

[See Commentary]

§10-1-13.1 Call of Hearing. The presiding officer of the Public Hearing Body shall indicate that a public hearing has been called for the consideration of said applications.

Thereupon, the Public Hearing Body shall consider each application on an individual basis in the order of the published agenda or as otherwise called by the presiding officer.

§10-1-13.2 Report by Land Use Officer. The presiding officer shall call upon the Land Use Officer or other appropriate staff to make a report, if any, concerning the proposed application. The Land Use Officer or other appropriate staff shall then give the report, if any, for said application.

§10-1-13.3 Presentation by Applicant. The presiding officer shall call on the applicant or applicant's agent who shall present and explain his application. It shall be the duty of the applicant to carry the burden of proof that the proposed application promotes public health, safety, morality, and/or general welfare.

§10-1-13.4 Determination of Interested Parties. Following the applicant's presentation, the presiding officer may ask for a show of hands of those persons who wish to appear in support of or opposition to the petition. If it appears that the number of persons wishing to appear in support of or opposition to the petition is in excess of that which may reasonably be heard, the presiding officer may request that a spokesperson for the group be chosen to make presentations. Proponents and opponents of each decision shall have at least 10 minutes to present data, evidence and opinions on the proposed application.

§10-1-13.5 Public Testimony. Prior to speaking, each speaker will identify him or herself and state his or her current address. Each speaker shall speak only to the merits or liabilities of the proposed application under consideration and shall address his or her remarks only to the Public Hearing Body. Each speaker shall refrain from personal attacks on any other speaker or the discussion of facts or opinions irrelevant to the proposed application under consideration. The presiding officer may limit or refuse a speaker the right to continue, if the speaker, after first being cautioned, continues to violate these procedures.

§10-1-13.6 Applicant's Rebuttal. After public testimony, the applicant or applicant's agent shall be allowed a short opportunity for rebuttal and final comment.

§10-1-13.7 Close of Public Hearing. After the above procedures have been completed, the presiding officer will indicate that the public hearing is formally closed, and the public hearing shall not be reopened except upon formal vote of the Public Hearing Body; provided, however, that this provision shall not require the closure of a public hearing where at the discretion of the Public Hearing Body the hearing should be continued at a later time or date.

§10-1-13.8 Recess of Hearing. The Public Hearing Body, for any reason it deems necessary or desirable, may recess or continue a hearing. Upon recessing or continuing a hearing, the Public Hearing Body shall announce the time, date and place when the hearing or hearings will be resumed and such public announcement shall be considered sufficient notice thereof to all persons.

§10-1-13.9 Vote. After the public hearing is closed, the Public Hearing Body may vote upon the proposed application. Prior to voting, the Public Hearing Body shall consider evidence and public testimony presented at the public hearing, and the Public Hearing Body shall apply the evidence to the applicable criteria specified in this code for said application. It will not be required that the Public Hearing Body consider every criteria contained in this code, except for variances where all criteria for approving variances must be met. At such public hearings as herein required to be held by the Board of Commissioners [Mayor and City Council], the Board of Commissioners [Mayor and City Council] may enact an ordinance granting the application, or may by motion deny the application at the conclusion of the public hearing, or within a specified time thereafter. If the Board of Commissioners [Mayor and City Council] determines from the evidence presented that the applicant has shown that the proposed application is consistent the applicable criteria for said application, the application shall be granted and such approval may be subject to those reasonable conditions as may be imposed by the Board of Commissioners [Mayor and City Council].

§10-1-14 WITHDRAWAL OF APPLICATION

Any petition for an amendment to the text of this code, to amend the land use intensity district map, or for a conditional use permit may be withdrawn at any time prior to the public hearing on said application by the person or entity initiating such a request, upon written notice to the Land Use Officer. In the event of such withdrawal, no filing fee for said application would be refunded by the County [City].

§10-1-15 LIMITATION ON NEW APPLICATIONS

In a case where an application for text amendment to this code, application for map amendment, or application for conditional use is denied by the Governing Body, or in the case of a variance application that has been denied by the Board of Appeals, the same or substantially similar application shall not be eligible for resubmittal and reconsideration until six months has elapsed from the date of said denial.