

Sec. 36-31. Interpretation; procedures.

(a) **Right of appeal.** At any time within 20 days after a written order, requirement, permit, decision, refusal, or determination by the zoning administrator has been made interpreting or applying this chapter, except for actions taken in connection with prosecutions for violation hereof, the applicant or any other person, officer, or department representative of the city affected by it may appeal the decision to the board of zoning appeals by filing a notice of appeal with the community development department addressed to the board of zoning appeals stating the action appealed from and stating the specific grounds upon which the appeal is made.

(b) **Setting a public hearing.** The city shall set a public hearing for the appeal by the board of zoning appeals to be held not less than ten days nor more than 45 days after it receives a notice of appeal. Notice of the hearing of the appeal before the board of zoning appeals shall be given by mail to all applicants. A notice of hearing shall be published in the official newspaper of the city at least ten days before the hearing date if the appeal involves the determination of boundary lines of a use district. Any interested party may appear at the public hearing in person or by agent or attorney. The decision of the board of zoning appeals shall be by resolution. A copy of the resolution of the board of zoning appeals shall be mailed to the applicant by the city clerk.

(c) **Board of zoning appeals to decide.** The board of zoning appeals shall determine by resolution all appeals from any written order, requirement, permit, decision, refusal, or determination of the zoning administrator; and from any interpretation of the text of this chapter, the location of the boundary of a use district as shown on the zoning map. The resolution shall be adopted by a majority vote of all members present and voting on the issues presented by the appeal. In making the decision, members of the board shall consider the questions raised in light of the general purpose of this chapter and the comprehensive plan.

(d) **Appeal to city council.** Any person aggrieved by a decision of the board of zoning appeals may appeal the decision in a manner provided in section 36-34.

(e) **Fee for appeal (interpretation).** A required fee established by resolution adopted by the city council shall be charged for all requests for appeal or interpretation of this chapter.

(Code 1976, § 14:8-1.0)

Sec. 36-32. Registration of land use.

(a) **Approval required; exceptions.**

- (1) No person or business shall use or occupy any land or building within the city without first obtaining approval of a registration of land use for the proposed use.
- (2) Exceptions:
 - a. When a certificate of occupancy or certificate of property maintenance is issued as required by chapter 6 of this Code.

 *Cross reference(s)--Administration, ch. 2.

- b. When a permitted office use replaces an existing office use, provided the total office area of the building does not change in size.

(b) Responsibility. Both the property owner and the lessee shall be responsible for securing the registration of land use required by this section.

(c) Application and information. The applicant shall provide the following information to determine compliance with this section:

- (1) Site address.
- (2) Present use.
- (3) Proposed use.
- (4) Size of use(s).
- (5) Site plan - if necessary.

(d) Approval of the registration of land use. The city shall approve the registration of land use provided that the use is legal per this chapter and complies with the comprehensive plan and all state codes and licensing requirements. Once the registration of land use has been approved, the use shall be permitted to occupy the land or building.

(e) Revocation of a registration of land use. Any false statement or factual material submitted to the city for approval of a registration of land use shall automatically revoke the registration of land use. After the city has determined that false information was received, the city shall notify the owner and lessee that the registration has been revoked. The notification shall also include that they have ten days to either obtain a new registration of land use or terminate use of the land or building. If the use continues without a valid registration of land use, both the landowner and tenant shall be guilty of violating this section.

(Code 1976, §§ 14:8-2.0--14:8-2.9; Ord. No. 2202-01, § 2, 8-20-2001; Ord. No. 2218-02, § 2, 2-4-2002)

Sec. 36-33. Application and review process for conditional use permits and variances.

(a) Application of section provisions. This section shall apply to all conditional use permits and variances.

(b) General provisions.

- (1) *Hearings.*
 - a. No conditional use permit shall be issued until a public hearing on the request has been held by the planning commission.
 - b. No variance approval shall be adopted until a public hearing on the request has been held by the board of zoning appeals.
 - c. A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the city at least ten days prior to the date of the hearing.

- d. A notice of these hearings shall also be mailed at least ten days before the date of the hearing to each owner of the affected property and owners of record of property located wholly or partly within 350 feet of the property for which the conditional use permit or variance has been requested.
 - e. The person responsible for mailing the notice shall use the records of the county auditor's office or other appropriate records to determine the names and addresses of owners entitled to written notice. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the person giving the notice and shall be made a part of the record of the proceedings. The failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings provided a bona fide attempt has been made to comply with this section.
- (2) *Conditions and modifications.*
- a. The city council may impose reasonable conditions in any conditional use permit and may, at any time at its election or upon application by the property owner, modify the conditions of an existing conditional use permit as changing circumstances warrant. No modification of an existing conditional use permit may be made until a public hearing has been held by the planning commission in the manner outlined in section 36-34(b)(2) except that minor amendments shall require only notice to the holder of the permit and approval of the city council.
 - b. A minor amendment shall not be granted for proposed changes or modifications which will have an effect on required parking, required yards, floor area ratios, ground floor area ratios, signage, building height, density, covenants or agreements required by the original conditional use permit, or changes in conditional use permits issued in the FW, FF or FP districts.
 - c. The board of zoning appeals may impose reasonable conditions in any variance approval and may, at any time at its election or upon application of the property owner, modify the conditions of a variance approval as changing circumstances warrant. No modifications of an existing variance may be made until a public hearing has been held by the board of zoning appeals in the manner outlined in subsection (b)(1)b. of this section.
- (3) *Assent form.* No conditional use permit or variance with imposed conditions is valid until the applicant has signed an assent form and the approved exhibits which acknowledge the terms and conditions under which the conditional use permit or variance is granted, agreeing to observe them.
- (4) *Filing.* The resolution approving a conditional use permit, variance, or modification of a conditional use permit or variance shall include the legal description of the property for which the permit or variance was issued. A certified copy of the resolution shall be filed with the appropriate filing officer at the county recorder or county registrar of titles.

- (5) *Abandonment, revocation and cancellation of permit or variance.* If the zoning administrator determines that any holder of an existing variance or conditional use permit has violated any of the conditions or requirements imposed as a condition to approval of the permit or variance, or has violated any other applicable laws, ordinances, or enforceable regulation, the variance or conditional use permit granted by the city may be revoked and canceled by the following process:
- a. The zoning administrator shall notify the holder in writing of the violation. The notice shall be given in person or by depositing a copy of it in the United States post office or a depository designated by the United States Postal Service for the deposit of mail, addressed to the address of the applicant stated on the original application. Notice shall also be served upon the occupant of the premises for which the conditional use permit or variance was issued or, if no occupant can be found, notice shall be posted in a conspicuous place upon such premises. Service shall be effective on the date of mailing, personal service or posting.
 - b. The notice shall state that after the expiration of ten days from the date of service, the conditional use permit or variance is terminated without further action or proceeding.
- (6) *No construction required after one year.* All variances and conditional use permits shall be revoked and canceled if one year has elapsed from the date of the adoption of the resolution granting the conditional use permit or variance and the holder of the conditional use permit or variance has failed to make actual use of the premises according to the provisions contained in the permit or variance.
- (7) *New construction required after one year.* All variances and conditional use permits shall be revoked and canceled after one year has elapsed from the date of the adoption of the resolution granting the variance or conditional use permit if a new structure or alteration or substantial repair of an existing building is required by the conditional use permit or variance and the holder has failed to complete the work within that year, unless a valid building permit authorizing such work has been issued and work is progressing in an orderly way.
- (8) *Occurrence of certain events.* If the holder of a conditional use permit or variance fails to make actual use of vacant lands or lands and structures which were existing when the permit or variance was issued and no new structure, alteration, or substantial repair to existing buildings was required; or if a new structure was required by the conditional use permit or variance and no building permit has been obtained, the conditional use permit or variance shall be revoked and canceled upon the occurrence of any of the following events:
- a. A change in the zoning use district for such lands is made by amendment to the ordinance from which this chapter is derived by the city council.
 - b. Eminent domain proceedings have been initiated to take all or any part of the premises described in the conditional use permit or variance.
 - c. The use described in the conditional use permit or variance becomes an illegal activity under the laws of the United States of America or this state.

- d. Title to all or part of land described in such conditional use permit or variance is forfeited to the state for nonpayment of taxes.
 - e. The person to whom the conditional use permit or variance was issued files a written statement in which that person states that the conditional use permit or variance has been abandoned. The statement shall describe the land involved or state the resolution number under which the conditional use permit or variance was granted.
 - f. The premises for which the conditional use permit or variance was issued are used by the person to whom the permit or variance was issued in a manner inconsistent with the provisions of such conditional use permit or variance.
 - g. The building or structure for which a variance or conditional use permit was granted is removed.
- (9) *Abandonment of existing conditional use permits and variances.* The one-year period used in this chapter to compute time to determine whether a conditional use permit or a variance has been canceled or revoked shall begin with the date of adoption of the resolution granting the conditional use permit or variance.
- (10) *Abandonment if conditions not met or use discontinued.*
- a. Any conditional use permit granted by the city is revoked and canceled if all conditions imposed in the conditional use permit are not satisfied within a time specified by the city council or if the approved use is discontinued for a period of more than two years.
 - b. Any variance granted by the board of zoning appeals is revoked and canceled if all conditions imposed in the variance are not satisfied within the time specified by the board of zoning appeals or if the approved use is discontinued for a period of more than two years.
 - c. If an extension is requested by the owner of the property on which a conditional use permit has been discontinued prior to the end of two years, the city council may consider or approve, by resolution, such requested extension if the city council finds the use to be acceptable and a satisfactory reason exists to grant an extension; however, such extension shall not be granted if it would allow the discontinued use to extend more than an additional three years beyond the original two years.
- (11) *Extension of time.* The city council may grant one or more 90-day extensions of time beyond the termination date for any conditional use permit. The board of zoning appeals may grant an extension of time not to exceed one year for any variance. The fee to process an extension request shall be set by resolution adopted by the city council establishing such fees. At the time the extension is granted, the city council or the board of zoning appeals may waive the fee and direct the return of a part or all of it to the applicant. In considering whether to refund any of the fee charged, the city shall determine whether it has incurred additional expense in considering the request for extension. Requests for extension of time must be filed with the city manager before the termination date of the conditional use permit or variance, but such request shall not be filed more than 21 days before the termination date.

(12) *Denial; appeal of variance decision.*

- a. Conditional use permits may be denied by resolution of the city council. A resolution of denial shall constitute a finding by the city council that the conditions required for approval do not exist.
- b. Variance applications may be denied by resolution of board of zoning appeals. A resolution of denial shall constitute a finding by the board of zoning appeals that the conditions required for approval do not exist. Any owner of the affected property or an owner of property situated either wholly or partly within 350 feet of the affected property may appeal the decision of the board of zoning appeals to the city council following the procedures in subsection (d)(6) of this section. The appeal must be submitted in writing to the planning director within ten calendar days after the date of the board of zoning appeals decision.
- c. Any person who is denied a variance by the board of zoning appeals or whose appeal is denied by the city council may not reapply for the same variance within 24 months from the denial date unless the physical conditions of the property or land in question have changed. A change in the physical conditions would include, but is not limited to, a division or combination of the land or a taking of part of the land for public purpose.

(13) *Duration and enforcement.* Conditional use permits and variances shall remain in effect as long as the conditions stated in the permit or variance are observed. Failure to comply with those conditions results in termination of the conditional use permit or variance.

(c) Conditional use permits. The city council may grant conditional use permits for uses and purposes authorized by this chapter by resolution and may impose such additional conditions and safeguards in permits as may be necessary to protect the comprehensive plan and the general purpose and intent of this chapter. Applications for conditional use permits shall include a site plan and such other information required by the city which shall be processed in the following way:

- (1) *Referral to planning commission.* The request for a conditional use permit shall be referred to the planning commission for study of the effect of the proposed use on the comprehensive plan and on the character and development of the neighborhood. The planning commission shall recommend to the city council whether to grant or deny the conditional use permit request and, if the recommendation is to approve the request, the conditions which should be attached to the conditional use permit.
- (2) *Issuance.* In considering an application for a conditional use permit under this chapter, the city council shall consider the advice and recommendations of the planning commission and the effect of the proposed use upon the health, safety, and welfare of occupants of surrounding lands, existing and anticipated traffic conditions, parking facilities on adjacent streets, values of property in the surrounding area, and the objectives of the comprehensive plan. If it shall determine, by resolution, that the proposed use will not be detrimental to the health, safety, or general welfare of the community, will not cause serious traffic congestion or hazards, will not seriously depreciate surrounding property values, and that it is in harmony with the general purpose and intent of this chapter and the comprehensive plan, the city council may grant such permits and may impose conditions and safeguards in the permit as a condition of its approval.

- (3) *Action without planning commission recommendation.* If no recommendation is transmitted by the planning commission within 60 days after the application for conditional use permit has been referred to the commission, the city council may take action on the request without a recommendation of the planning commission.
- (4) *Conditional use permits.* No application for a conditional use permit under the provisions of this chapter shall be filed until the applicant has paid the city treasurer the application fee adopted by the city council.
- (5) *Assent forms.* No conditional use permit shall become valid until the applicant has signed an assent form according to subsection (b)(3) of this section.
- (6) *Reimbursement.* No conditional use permit shall become valid until the applicant has paid to the city all fees due according to section 36-35(b).
- (7) *Building permits.* No building permit shall be issued for any property for which the city council has approved a conditional use permit until the applicant has paid to the city all required fees, has signed an assent form, and has filed with the city clerk any required letter of credit or other security.

(d) Variances; limitations. The board of zoning appeals may grant variances from the strict application of the provisions of this chapter and impose conditions and safeguards in the variances granted in cases where by reason of narrowness, shallowness, shape of a lot, exceptional topographical or water conditions, or other extraordinary and exceptional conditions of the lot, the strict application of the terms of this chapter would result in peculiar and practical difficulties or exceptional or undue hardship to the owner of the lot in developing or using the lot in a manner customary and legally permissible in the use district in which such lot is located. Applications for variances shall be filed with the director of planning and shall describe the exceptional conditions of the lot and the peculiar and practical difficulties claimed as a basis for the variance.

- (1) *Applications.* All applications for variances shall be initiated by, or with the consent of, the owners of the property. A complete application shall consist of:
 - a. An application form.
 - b. The fee payment.
 - c. A survey of the property showing all property lines, structures and easements.
 - d. A plan showing all existing and proposed structures.
 - e. A map or plat showing the lands proposed for variance and all lands within 350 feet of the boundaries of that property and the names and addresses of the owners of the lands in the area as they appear on the records of the county auditor or other appropriate records.
 - f. Any other materials required by the city.

Before a variance request is approved, the request for the variance shall be considered by the board of zoning appeals. The board of zoning appeals shall consider the strict application of the provisions of this chapter and the requirements of all applicable state law.

- (2) *Consideration by the planning commission.* Before the board of zoning appeals issues any variance, the planning commission or a representative authorized by the planning commission shall review the variance request and report its findings and recommendations to the board of zoning appeals. If no report is transmitted to the board of zoning appeals within 45 days after referral of the variance request to the planning commission or its authorized representative, the board of zoning appeals may take action without a planning commission report.
- (3) *Notice.* After receipt of a complete application, the city shall set a date for a public hearing before the board of zoning appeals for any variance request within 45 days after the application for a variance is received by the city. The public hearing shall be held only after the notice required by subsection (b)(1) of this section has been given. The Zoning Administrator shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variance(s) occurring within a floodway, flood fringe or floodplain district sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing. (Ord. No. 2276-04, 8-14-04)
- (4) *Hearings.* The board of zoning appeals shall hear arguments at the hearing for and against the proposed variance and it may continue that hearing from time to time if a continued hearing is reasonably required. Final vote on the proposed variance shall be taken within 30 days after the public hearing is closed.
- (5) *Issuance.* The board of zoning appeals shall consider the effect of the proposed variance upon the health, safety and welfare of the community, the existing and anticipated traffic conditions, light and air, danger of fire, risk to public safety, the effect on the character and development of the neighborhood and the values of property in the surrounding area, and the effect of the proposed variance upon the comprehensive plan.
 - a. The board of zoning appeals may grant a variance from the strict application of the provisions of this chapter provided that:
 1. Where by reason of narrowness, shallowness, or shape of a lot, or where by reason of exceptional topographical or water conditions or other extraordinary and exceptional conditions of such lot, the strict application or the terms of this chapter would result in peculiar and practical difficulties or exceptional or undue hardship upon the owner of such lot in developing or using such lot in a manner customary and legally permissible within the use district in which such lot is located.
 2. Conditions applying to the structure or land in question are peculiar to the property or immediately adjoining property, and do not apply, generally, to other land or structures in the use district in which the land is located.
 3. The granting of the proposed variance is necessary for the preservation and enjoyment of a substantial property right of the applicant.
 4. The granting of the proposed variance will not impair an adequate supply of light and air to the adjacent property, unreasonably increase the congestion in the public streets, increase the danger of fire, or endanger public safety.
 5. The granting of the variance will not unreasonably impact on the character and development of the neighborhood, unreasonably diminish or impair established property values in the surrounding area, or in any other way impair the health, safety, and comfort of the area.

6. The granting of the proposed variance will not be contrary to the intent of this chapter and the comprehensive plan.
 7. The granting of a variance will not merely serve as a convenience to the applicant but is necessary to alleviate a demonstrable undue hardship or difficulty.
- b. The board of zoning appeals may grant the variance requested and impose conditions and safeguards as a condition to the variance to ensure compliance with the conditions imposed and to protect adjacent properties.
 - c. If the application for a variance involves property within a floodway, flood fringe and floodplain district, then a copy of all decisions granting variances shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action, and the following additional variance criteria of the Federal Emergency Management Agency must also be satisfied:
 1. Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 2. Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 4. No variance shall allow a lower degree of flood protection than the Regulatory Flood Protection Elevation.
 - d. Flood Insurance Notice and Record Keeping. The Zoning Administrator shall notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and 2) Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.
- (6) *Appeal to the city council.* Any owner of affected property or any owner of property situated wholly or partly within 350 feet of the affected property may appeal the decision of the board of zoning appeals to the city council. The appeal must be in writing and must be filed with the city clerk within ten calendar days after the date of the board of zoning appeals' decision. The required fee shall be paid to the city treasurer when the appeal request is filed. When an appeal is received by the city, the applicant will be notified of the date and time the city council will hear the appeal. No appeal will be heard until the city

has notified all property owners within 350 feet of the subject property of the date scheduled for the appeal hearing. If no appeal is made within the ten-day period, the decision of the board of zoning appeals shall be final. If an appeal is taken from the decision of the board of zoning appeals, the city council shall hear the appeal within 30 days of the filing of the appeal unless that period is extended with consent of the appellant. The city council may reverse a decision of the board of zoning appeals by an affirmative vote of the majority of its full membership. The city council shall render a decision within 30 days concluding the appeal hearing. A decision of the board of zoning appeals shall not become effective until the end of the appeal period has expired. If an appeal is filed before the end of the appeal period the decision of the board of zoning appeals shall not become effective until the city council has rendered a decision on the appeal.

- (7) *Fees.* No application for a variance from the provisions of this chapter shall be filed until the applicant has paid to the city treasurer the application fee established by this chapter which was adopted by the city council. No appeal of a decision shall be heard until the appellant has paid to the city treasurer the appeal fee established by this chapter adopted by the city council.
- (8) *Limitations.* No application for a variance shall be accepted, and no variance shall be granted by the city for any of the following:
- a. Land uses not specifically listed within a use district.
 - b. Floor elevations lower than the flood protection elevation in the floodplain district.
- (9) *Combined variance and conditional use permit, planned unit development process, or subdivision.* The city council will act as the board of zoning appeals for variance requests made in conjunction with a conditional use permit, PUD application, or subdivision. The planning commission shall hold the public hearing on the variance request, review the variance request along with the conditional use permit, PUD application, or subdivision process, and report its findings and recommendations to the city council.

(e) Refund of fees. If any application for a conditional use permit, variance, zoning amendment, PUD, continued special permit, Comprehensive Plan amendment, subdivision, or vacation is withdrawn in writing by the applicant or is not processed by the city for any other reason so that a final decision is not made by the city, the applicant is entitled to a refund of the application fees paid to the city according to the following provisions:

- (1) 75 percent of the application fee and 100 percent of the recording fee shall be refunded if the request is withdrawn before the deadline for rescinding the public hearing publication.
- (2) 50 percent of the application fee and 100 percent of the recording fee shall be refunded if the request is withdrawn before the request has been considered by the planning commission or board of zoning appeals.
- (3) 25 percent of the application fee and 100 percent of the recording fee shall be refunded if the request is withdrawn before the request is considered by the city council.

(Code 1976, §§ 14:8-3.0-14:8-3.4; Ord. No. 2167-00, 5-15-2000; Ord. No. 2238-03, 4-7-2003, Ord. No. 2276-04, 8-16-2004)

Sec. 36-34. Amendments.

(a) **Generally.** The city council may, by an affirmative vote of a majority of all its members, adopt amendments to this chapter. Amendments which change all or part of the existing classification of a zoning district from residential to either commercial or industrial require a two-thirds majority vote of all members of the city council.

- (1) *Initiation of proceedings.* Proceedings for amendment of the ordinance from which this chapter is derived shall be initiated by:
 - a. A petition of the owners of the actual property, the zoning of which is proposed to be changed.
 - b. A recommendation of the planning commission.
 - c. Action of the city council.
 - d. A recommendation of the community development director.
- (2) *Reference to the planning commission.* Except in the case of an initial recommendation by the planning commission, any proposed change shall be submitted to the planning commission and its recommendation shall be submitted to the city council before further proceedings are taken on any zoning request. The planning commission shall meet, consider the proposed change, and submit its recommendation to the city council within 60 days after submission of the matter to it. If no recommendation is given to the city council by the planning commission within 60 days after the request for a recommendation has been made to the planning commission, the city council may take action without a planning commission recommendation.

(b) **Additional requirements** for amendments changing zoning districts and boundaries thereof.

- (1) *Applications.* All applications for changes in the boundaries of any zoning district initiated by the petition of the owners of the property shall be accompanied by a map or plat showing the land proposed to be changed and all lands within 350 feet of the boundaries of that land and the names and addresses of the owners of the lands shown on the records of the county auditor.
- (2) *Hearings.* After an application is received for a change to the ordinance from which this chapter is derived, the city shall set a date for a public hearing. At the time set for the hearing, the planning commission shall hear arguments for and against the proposed change, and may continue the hearing from time to time not exceeding 45 days from the original date specified in the notice of hearing. If a hearing is continued more than once, another notice shall be given in accordance with subsection (b)(3) of this section.

- (3) *Notice.* A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the city at least ten days prior to the day of the hearing. When an amendment involves changes in district boundaries affecting an area of five acres or less, a similar notice shall be mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates. For the purpose of giving mailed notice, the person responsible for mailing the notice may use the records of the county auditor or any appropriate records to determine the names and addresses of owners. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the record of the proceedings. The failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this subsection has been made. Proof of service shall be made by the affidavit of the persons serving same and shall be filed with the city clerk.
- a. The commissioner of the department of natural resources shall be notified at least ten days in advance of the public hearing of any request to amend the boundaries of the FW, FF and FD districts.
 - b. FW, FF or FD boundaries shall not be amended unless the city provides adequate information to the commissioner of the department of natural resources that the map is in error or the lands are adequately protected from flood.
- (4) *Fees for rezoning and amendments to the text.* No application for change in the boundaries of any zoning district or for change in the text of the ordinance from which this chapter is derived shall be filed until the person making the request has paid to the city treasurer a fee, the amount which has been set by resolution of the city council. If the city planning commission initiates proceedings for rezoning and text amendments, the council may require that such payment be made by owners of property involved before making any change.
- (5) *Planning commission recommendation.* Any proposed change to the ordinance from which this chapter is derived shall be submitted to the planning commission. After holding a public hearing and deliberating on the request, the planning commission shall render a finding that all amendments to the zoning ordinance map and text are consistent with the comprehensive plan and shall submit its findings and recommendation to the city council within 45 days after submission of the matter to the city council. If no recommendation is given to the city council by the planning commission within 45 days after the request for a recommendation has been made to the planning commission, the city council may take action without a planning commission recommendation.
- (6) *Time limit for action.* The city council shall act on the proposed change within 45 days after reviewing a recommendation from the planning commission, or a period of 45 days has elapsed from the time the planning commission received the request, if no recommendation was made. This period may be extended if the applicant agrees to a time extension.

(Ord. No. 2358-08, 8-14-2008)

(c) Special procedure for comprehensive rezoning. Whenever the planning commission, in its capacity or acting on referral from the city council, recommends a comprehensive rezoning of a substantial part of the city which consists of not less than 50 lots of platted area or five acres of unplatted area in order to conform to changing conditions, the city council may make all or a part of that recommendation effective by amendment to the ordinance from which this chapter is derived. In such a case, the provisions of section 36-35(b) shall not be applicable; but the procedure for such amendment shall be as follows:

- (1) *Maps.* A map shall be prepared and filed in the office of the city clerk, which shows all streets and lands in the area proposed to be rezoned in sufficient detail to permit each platted lot and each parcel of ground to be identified by the zoning ordinance classification assigned and all zoning regulations which will be applicable to them if the proposed amendment for rezoning is adopted.
- (2) *Notice.* The city clerk shall publish notice in official newspaper of the city at least ten days prior to the date of the hearing.
(Ord. No. 2358-08, 8-14-2008)
- (3) *Planning commission hearing.* The planning commission shall meet and conduct a public hearing upon the proposed rezoning amendment at the time and place specified in the notice prior to making a recommendation for a comprehensive rezoning to the city council. The hearing may be adjourned from time to time by the planning commission, but it shall not be continued more than 60 days from the date of the original hearing.
- (4) *Adoption.* The city council shall act upon the proposed rezoning not less than seven days or more than 60 days after it receives a recommendation from the planning commission. A two-thirds vote of all members of the council shall be required to adopt any amendment to the zoning ordinance. The city council may alter the amendment proposed, but if the alteration results in a modification of the zoning map filed at the time of the first publication of notice of the hearing, it shall not be made until ten days after notice has been given by registered mail to the owner of the property to be zoned that an amendment is being considered and may be adopted which is different from that shown on the zoning map filed in support of the requested zoning change.
- (5) *Publication.* If an ordinance is adopted which provided for comprehensive rezoning even though less than the entire city is affected, the city council shall require that new zoning maps be prepared showing the zoning district boundaries after adoption of the comprehensive amendment. Those maps shall be published as part of the publication of the ordinance amendment. The zoning ordinance need not describe the tracts of land included in each zoning district in any way other than by reference to the zoning maps required by this section.

(d) Procedure for comprehensive plan and amendments.

- (1) *Purpose and intent.* The comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social and economic development, both private and public, of the city. The comprehensive plan includes goals, policies and standards, a land use plan, a community facilities plan, a transportation plan and recommendations for plan execution and is an adopted statement of city policy concerning development. The ordinance from which this chapter is derived is adopted for the purpose of carrying out the policies and goals of the comprehensive plan. The planning commission shall render a finding that all amendments to the zoning ordinance map and text are consistent with the comprehensive plan.
- (2) *Amendments.*
 - a. *Initiation of proceedings.* Proceedings for amendment to the comprehensive plan shall be initiated by:
 1. A petition of the owners of the actual property, the guiding of which is proposed to be changed.
 2. A recommendation of the planning commission.
 3. Action of the city council.
 4. A recommendation of the community development director.
 - b. *Amendment process.*
 1. Any person requesting a change in the comprehensive plan shall submit an application in the form prescribed by the city. The application shall describe the change requested, state the reasons for the requested change, and attach documentation to support the request. The applicant shall pay a fee established by the city council when the application is filed with the director of community development. If the request requires a change in the comprehensive plan map, two copies of a list of the names and addresses of property owners of record of all properties within 500 feet of the parcel for which the change is requested shall be filed with the application. The names and addresses of property owners within 500 feet may be obtained from the county auditor or other appropriate records.
 2. When comprehensive plan land use amendments are proposed within 500 feet of a municipal boundary or county road, or when land use or text amendments may have impacts on the affected school or watershed districts, the director of community development shall forward a copy of the proposed request to adjacent municipalities, the affected school district, the county, and the affected watershed district within ten working days of receipt of the request by the city.

3. The director of community development shall set a date for a public hearing on the request by the planning commission. Notice of the public hearing shall be published at least ten days before the date of hearing, and, if the request requires an amendment of the comprehensive plan map, notice shall be mailed to all property owners of record within 500 feet of the subject property at least ten days before the date of the hearing. The planning commission shall hold the public hearing on the date stated in the notice and may continue the hearing once. If the planning commission believes it necessary to continue the hearing a second time, a new notice shall be published for the continued hearing.
 4. The planning commission shall consider the testimony received at the public hearing, the staff reports, and other material it deems pertinent and shall report its findings and recommendations to the city council.
 5. All comprehensive plan amendments shall be adopted by resolution of the city council approved by a two-thirds majority of all members of the council contingent upon approval of the metropolitan council. The resolution shall be forwarded to the metropolitan council within ten days following city council approval. The resolution shall be published following its adoption no later than 21 days after the date of its passage. The date of passage is the date of final metropolitan council approval if no revisions are requested. The resolution shall be effective upon its publication.
 6. Requests for zoning ordinance amendments for property affected by a pending request for a comprehensive plan map amendment may be handled concurrently, however, the approval of such application shall be conditioned upon the approval of the comprehensive plan amendment by the metropolitan council and shall not become effective until after such approval is received.
 7. If the requested comprehensive plan amendment involves a land use or density change on a particular parcel of land, no request for a conditional use permit, planned unit development, or variance related to that parcel shall be accepted for processing until action on the comprehensive plan amendment has been completed.
- c. *Exceptions.* When changes to the comprehensive plan involve a complete comprehensive plan revision, notice to individual property owners is not required. However, notice of public hearing at the planning commission shall be published in the official newspaper on three consecutive weeks, the latest at least ten days prior to the public hearing. Notice shall be sent to adjacent municipalities, the county, affected watershed districts, and affected school districts for review and comment of the proposed plan revision.

(Code 1976, §§ 14:8-4.0--14.8-4.4; Ord. No. 2188-01, 2-5-2001; Ord. No. 2212-01, § 2, 10-3-2001)

Sec. 36-35. Reimbursement for city costs.

(a) Purpose. The purpose of this section is to provide a procedure to reimburse the city for its cost of review, analysis, and evaluation of development proposals, conditional use permits, comprehensive plan amendments, zoning amendments, and enforcement of the ordinance from which this chapter is derived in cases where, due to the level of complexity of the application under consideration, excessive costs beyond those normally incurred by the city as a result of the administration of the ordinance from which this chapter is derived are incurred. The excess costs result from problems presented in review, analysis, and evaluation which necessitate intensive investigation and research. The intent of this section is to ensure an adequate level of review of these cases and to ensure that the adverse effects of development on the city are minimized and compliance with goals and objectives of the comprehensive plan and this chapter are obtained.

(b) Conditions where reimbursement authorized. The city may, in its sole discretion, require reimbursement of city costs under the following conditions:

- (1) When the city manager finds multiple planning commission and city council meetings are required to review a particular item and additional staff time is expended on that item subsequent to the initial meeting.
- (2) When the city manager finds it necessary to retain consultants and experts to review requests and advise its staff of specific impacts of a proposal, including but not limited to impacts on traffic, utilities, drainage, and aesthetic or environmental characteristics of the community.
- (3) When it is necessary for the city attorney to review a proposal.
- (4) When the city manager finds that other extraordinary costs are incurred by the city as a result of the administration of this chapter.

(c) Procedure.

- (1) The city shall notify the applicant that the city will incur additional costs at the earliest possible time and, if possible, provide the applicant with an estimate of the expected additional cost.
- (2) The applicant shall pay the estimated additional cost to the city by certified check or bank money order. If the amount paid to the city initially is insufficient to cover all city costs, the additional amount shall be billed to the applicant. Any money which has not been used to pay additional costs after the applicant's request has been processed shall be refunded to the applicant.
- (3) No certificate of occupancy for any project subject to this section shall be issued until all money owing to the city has been received.
- (4) All costs billed under this section shall be based on the actual cost to the city of staff time, overhead, material costs, and actual billings from consultants, experts and attorneys.

(Code 1976, §§ 14:8-5.0--14:8-5.3)

Sec. 36-36. Continuation of certain special permits.

(a) **Purpose.** The purpose of this section is to continue certain special permits issued under provisions of the previous zoning ordinance and to set forth procedures by which a special permit may be terminated or converted to a conditional use permit and by which property affected by such special permits may be altered.

(b) **Definitions.** The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Certificate of zoning compliance means a certificate issued by the zoning administrator to the owner of a property covered by a continued special permit certifying that the property is in compliance with all provisions of the continued special permit.

Continued special permit means a special permit continued in effect pursuant to provisions of this section.

Current zoning ordinance means Ordinance No. 92-1902 adopted December 7, 1992, which became effective on December 31, 1992.

Previous zoning ordinance means Ordinance No. 730 adopted December 28, 1959, and all subsequent amendments thereto which were in effect on December 30, 1992.

Property means the legally described parcel of land, governed by a special permit, including but not limited to structures, parking lots, landscaping, lighting, signs and all other physical elements on the site and the use, operation and functioning of these elements.

Special permit means a land use approval issued by resolution of the city council under provision of the previous zoning ordinance.

(c) **Status of special permits.** Land uses permitted by special permits under provisions of the previous zoning ordinance are either permitted, permitted with conditions, conditional uses or nonconforming uses under the provisions of this chapter. This section establishes the status of special permits approved under the previous ordinance based upon the four categories described in this subsection and sets forth procedures for the termination, and in some cases conversion, of special permits.

- (1) *Special permit uses now permitted.* Special permits issued for land uses which, under this chapter, are now permitted uses in the zoning district in which the property is located are hereby continued in full force and effect. The owner of property subject to a continued special permit may request termination of the special permit by providing the city with a letter requesting termination. Upon receipt of a letter requesting termination, the city shall issue a written termination to the applicant which shall be recorded on the title to the property by the city. The owner of the property shall sign an assent form provided by the city wherein the owner agrees to indemnify and hold harmless the city for any actions or consequences arising from termination of the special permit. Upon termination of the special permit, the land use shall be governed by the regulations of this ordinance, and other applicable ordinances. Once a special permit is declared terminated, it may not be reinstated.

- (2) *Special permit uses now permitted with conditions.* Special permits issued for land uses which, under this chapter, are now permitted uses with conditions in the zoning district in which the property is located are hereby continued in full force and effect. The owner of property subject to a continued special permit may request termination of the special permit by providing the city with a letter requesting termination. Upon receipt of a letter requesting termination, the city shall issue a written termination to the applicant which shall be recorded on the title to the property by the city. The owner of the property shall sign an assent form provided by the city wherein the owner agrees to indemnify and hold harmless the city for any actions or consequences arising from termination of the special permit. Upon termination of the special permit, the land use shall be governed by the regulations of this ordinance, and other applicable ordinances. Once a special permit is declared terminated, it may not be reinstated.
- (3) *Special permit uses now conditional uses.* Special permits issued for land uses which, under this chapter, are now conditional uses in the zoning district in which the property is located are hereby continued in full force and effect. The holder of a continued special permit may request the city to verify compliance of the property with the terms and conditions of the continued special permit. A holder of a special permit requesting such verification shall submit such plans and other documentation necessary to demonstrate to the zoning administrator that the property complies with the terms and conditions of the continued special permit. Upon a satisfactory demonstration of compliance with the conditions of the continued special permit, the zoning administrator shall issue a certificate of zoning compliance stating that the property complies with the terms and conditions of the continued special permit. The certificate of zoning compliance shall be recorded on the title of the subject property by the city.

The holder of a continued special permit may request the city to convert the special permit to a conditional use permit under the terms of this chapter, provided the property meets all conditions and requirements of this ordinance and other applicable city ordinances. The procedure for converting a continued special permit to a conditional use permit shall be the same as that procedure required for adoption of a conditional use permit as specified in section 36-33(c).

- (4) *Special permit uses now nonconforming uses.* A land use which was permitted by special permit and which became a nonconforming land use in the district in which it is located when the ordinance from which this chapter was adopted on December 31, 1992, shall be a legal nonconforming use subject to the provisions of section 36-401, and the special permit authorizing the land use is now null and void.

(d) General conditions for continued special permit uses. All land uses subject to a continued special permit are subject to the following general conditions:

- (1) Any property covered by a continued special permit shall comply with all provisions of the special permit which were in effect on December 31, 1992. If it is subsequently determined that a property is not in compliance with the provisions of the continued special permit, the holder of the continued special permit shall take whatever actions are necessary to bring the property into compliance with the conditions and provisions set forth in the special permit. Failure to bring the special permit into compliance within 12 months of written notification of noncompliance by the city shall be grounds for termination of the continued special permit. The procedure to be followed in terminating the special permit shall be that specified in subsection 36-33(b)(5). Upon termination of the continued special permit, the use shall be subject to the provisions of section 36-401 and all other applicable provisions of this chapter, including the regulations for the district in which the use is located.

- (2) The property shall comply with all provisions of this chapter which require compliance with certain provisions by a certain date, including the dates listed in subsection 36-362(i)(7), subsection 36-36(k), subsections 36-406(f) and (h).
- (3) If the property is damaged or destroyed and the cost to repair such damage or destruction exceeds 60 percent of the assessor's market value of the structure at the time of the damage, the property shall be brought into compliance with this chapter.
- (4) Property covered by a continued special permit may be expanded, altered or modified, subject to all of the following:
 - a. The expansion, alteration or modification shall comply in all respects with applicable provisions of this chapter, and such expansion or addition shall not result in an increase or intensification of any existing nonconformities, except in the C-1 district, where an existing building is located more than 20 feet from the front property line, building additions of up to 3,000 square feet of ground floor area may be constructed continuing the existing setback if a separate pedestrian access is provided between the building and the public street from all sides of the lot which front on a public right-of-way.
 - b. Any nonconformities existing on the site shall be brought into greater or complete compliance with other provisions of this chapter to the extent reasonable and possible, except that greater or complete compliance will not be required with the following provisions:
 1. Lot area.
 2. Lot width.
 3. Required yards.
 4. Building height.
 5. Floor area ratio.
 6. Ground floor area ratio.
 7. Density.
 8. Designed Outdoor Recreational Area and Open Lot Area.
(Ord. No. 2267-04, 4-12-04)
 - c. The expansion, alteration or modification shall follow the same procedures for approval as required by subsection 36-33(c) for conditional use permit amendments. This includes a finding that the amended continued special permit is consistent with the comprehensive plan.

(Code 1976, §§ 14:8-6, 14:8-6.1--14:8-6.4; Ord. No. 2267-04, 4-12-2004)

Sec. 36-37. Enforcement.**(a) Compliance with regulations.**

- (1) All persons, firms, corporations, and voluntary associations shall comply with the regulations and conditions contained in this chapter. Any person, firm, corporation, or voluntary association who fails to comply with any of the provisions of this chapter, or builds or alters a building in violation of any detailed statement, condition, or plan imposed in the manner permitted by this chapter, shall be guilty of a misdemeanor.
 - a. The city may enforce any provision of this chapter by mandamus, injunction, or any other appropriate remedy in any court of competent jurisdiction and may require reimbursement of all legal fees required for the enforcement of any provision of this chapter from persons found guilty of a violation.
 - b. The city, at its sole discretion, may enter into mediation regarding issues in the enforcement of this chapter, provided that mediation shall not be pursued where the issue involves a specific dimensional or performance requirement. Mediation may be pursued when the issue involves an interpretation of the application of chapter requirements. Mediation shall not be substituted for a variance proceeding and the city shall not agree to be bound by the mediation process when the result would be an action inconsistent with the intent of this chapter.
 - c. Each day that a violation occurs shall be considered a separate violation.
- (2) Land shall be used only for the purpose permitted in the district in which the land is located.
- (3) No building shall be erected, converted, enlarged, reconstructed, moved, structurally altered, or used for a use unless it is a use permitted in the district in which the building is located.
- (4) No building shall be erected, converted, enlarged, reconstructed, nor structurally altered to be higher than the height limit established for the district in which the building is located.
- (5) No building shall be erected, converted, enlarged, reconstructed, nor structurally altered unless it conforms to the area regulations of the use district in which the building is located.
- (6) No building shall be erected or structurally altered unless the site on which it is located provides the off-street parking and loading facilities required by this chapter.

- (7) The yards, parking spaces, designed outdoor recreation area, and open lot area required by this chapter for buildings existing at the time of adoption of the ordinance from which this chapter is derived or for any building erected after its adoption, shall not be encroached upon or considered as part of the yard, parking space, designed outdoor recreation area, or open lot area required for any other building unless joint use of parking or a combination of yards or designed outdoor recreation area or open lot area is specifically authorized by this chapter. No lot shall be divided nor shall any structure be erected or altered to reduce the floor area ratio below that required by this chapter for the district in which the lot is located. (Ord. No. 2267-04, 4-12-04)
- (8) Every building erected or structurally altered after the effective date of the ordinance from which this chapter is derived shall be located on a lot as defined in section 36-4 and in no case shall there be more than one principal building on one lot.
- (9) No building or land shall be used or occupied until a certificate of occupancy has been issued authorizing its use.
- (10) No building or land shall be used or occupied for a use which requires a conditional use permit until the conditional use permit has been issued.
- (11) No building or land shall be used or occupied for which a conditional use permit has been issued unless that use complies with all of the conditions of that conditional use permit.
- (12) If a building permit has been granted or if plans were on file with the director of inspectional services before the effective date of the ordinance from which this chapter is derived or any amendment adopted after that effective date or if a conditional use permit has been approved, the provision of this chapter or any later amendment shall not require a change in the plans, or in the size or use of the land if the construction described in the permit or those plans is started within 90 days of the effective date of the ordinance from which this chapter is derived or later amendment. If, however, building construction is voluntarily discontinued before completion of construction of the structure described in the permit or the plans by the permit holder for a period of 90 days, any further construction shall conform to the provisions of this chapter or the later amendment.
- (13) A use which violates the provisions of the ordinance which this chapter supersedes shall not be validated by the adoption of the ordinance from which this chapter is derived unless it is permitted by this chapter's provisions, nor shall this chapter extend any temporary use beyond the expiration date of a temporary permit granted prior to the effective date of the ordinance from which this chapter is derived.

(b) Enforcing officer. The planning and zoning supervisor is appointed the zoning administrator who shall enforce this chapter under the direction and control of the community development director and city manager.

(Code 1976, §§ 14:8-7.0--14:8-7.2; Ord. No. 2167-00, 5-15-2000; Ord. No. 2267-04; 4-12-2004)

Sec. 36-38. Public hearings.

Any public hearing required by this chapter may be continued once. If a hearing is continued more than once, another notice shall be given in accordance with section 36-34(b)(2).

(Ord. No. 2202-01, § 2, 8-20-2001)

Sec. 36-39. Compliance with the comprehensive plan.

No building permit, certificate of occupancy or registration of land use shall be issued unless the proposal complies with the comprehensive plan and the requirements of this chapter. If a conflict exists between this chapter and the comprehensive plan on land for which an approval is requested, such approval cannot be issued unless the conflict is resolved.

(Ord. No. 2218-02, § 2, 2-4-2002)

Secs. 36-40--36-70. Reserved.