

# Article 13: Amendments & Severability

## 13.1 AMENDMENTS

The City Council may, after recommendation from the Planning Commission, amend, supplement, or change the provisions of this Ordinance or Official Zoning Map. Such actions shall be consistent with the Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended, and the following:

### 13.1.1 Initiation Of Amendment

Amendments to the provisions of this Ordinance may be initiated by the City Council, Planning Commission, City Planner, Zoning Administrator, or by petition from one (1) or more residents or property owners of the City. An amendment to the Official Zoning Map (rezoning) may be initiated by the City Council, Planning Commission, Zoning Administrator, or the titleholder for the property subject to the proposed amendment. No fee shall be charged for amendments initiated by the City Council, Planning Commission, City Planner, or Zoning Administrator.

### 13.1.2 Application

An amendment to this Ordinance (except those initiated by the City Council, Planning Commission, City Planner, or Zoning Administrator shall be initiated by submission of a complete and accurate application to the City, along with the required fee established by the City Council. In the case of an amendment to the official Zoning Map, the following information shall accompany the application and fee:

- A. A legal description and street address of the subject property with a location map identifying the subject property in relation to surrounding properties.
- B. The name and address of the owner of the subject property and a statement of the applicant’s interest in the subject property, if not the owner of the fee simple title.
- C. The existing and proposed zoning district designation of the subject property and surrounding properties.
- D. A written description of how the requested amendment meets the criteria stated in this Section.

### 13.1.3 Amendment Review Procedure

Proposed amendments to this Ordinance or Official Zoning Map shall be reviewed in accordance with the following:

- A. Completeness Review: Upon receipt of an application to amend this Ordinance, the Zoning Administrator shall review the application to confirm all required material has been submitted. The Zoning Administrator shall notify the applicant of any outstanding items.

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- B. Technical Review: Prior to the Planning Commission's consideration, the proposed amendment and application materials shall be distributed to appropriate city officials for review and comment. The Zoning Administrator may also submit the application materials to designated City consultants for review.
- C. Public Hearing: The Planning Commission shall hold a public hearing for all proposed amendments in accordance with the procedures in Article 12.
- D. Planning Commission Consideration and Recommendation: Subsequent to the hearing, the Planning Commission shall review the proposed amendment, together with any reports and recommendations from staff, consultants, other reviewing agencies, and any public comments. The Planning Commission shall identify and evaluate all relevant factors and shall report its findings and recommendations to the City Council. In considering an amendment to the Official Zoning Map (rezoning) or Ordinance text, the Planning Commission shall consider the following factors in making its findings and recommendations, although not all standards must be met in order to recommend approval of an amendment:
1. Consistency with the Master Plan's goals, policies, and future land use map, including planned timing or sequence of development. If conditions have changed since the Master Plan was adopted, the consistency with recent development trends in the area shall be considered.
  2. Compatibility of all the potential uses allowed in the proposed zoning district(s) with the site's physical, geological, topographical, hydrological, and other environmental features.
  3. Compatibility of all the potential uses allowed in the proposed district(s) with surrounding uses and zoning in terms of suitability, intensity, traffic impacts, aesthetics, infrastructure, and potential influence on property values.
  4. Capacity of available utilities and public services to accommodate the uses permitted in the district(s) without compromising the health, safety, and welfare of City residents or burdening the City or Emmet County with unplanned capital improvement costs or other unplanned public expenses.
  5. The road system must be able to safely and efficiently accommodate the expected traffic generated by uses permitted in the zoning district(s).
  6. The apparent demand for the types of uses permitted in the district(s) in relation to the amount of land currently zoned and available in the City and surrounding communities to accommodate the demand.
  7. The boundaries of the proposed district(s) in relationship to the surrounding area and the scale of future development on the site.
  8. The requested rezoning will not create an isolated or incompatible zone in the neighborhood.

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92 9. Other factors deemed appropriate by the Planning Commission and City Council.  
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94 E. City Council Action: The City Clerk shall forward a copy of the proposed amendment,  
95 findings, and recommendation from the Planning Commission to the City Council for  
96 consideration and final action.  
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98 1. The City Council may adopt or reject the proposed amendment or may refer the  
99 amendment back to the Planning Commission for revision or further consideration.  
100 The City Council may modify the proposed amendment if the modifications are de  
101 minimis. If the City Council requests any substantial revisions to the proposed  
102 amendment, the amendment and requested revisions shall be referred to the  
103 Planning Commission for further consideration.  
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105 2. The City Council may, at its discretion, hold additional public hearings on the  
106 proposed amendment. Furthermore, the City Council shall hold a public hearing if  
107 requested by an interested property owner. Any public hearing held by the City  
108 Council shall follow the procedures in accordance with the Michigan Zoning Enabling  
109 Act, Public Act 110 of 2006, as amended.  
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111 13.1.4 Effective Date

112 A notice of adoption of an approved amendment shall be published in a newspaper of general  
113 circulation in the City within fifteen (15) days of adoption. The amendment shall take effect upon the  
114 expiration of seven (7) days after publication.  
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116 13.1.5 Re-Application

117 Whenever an application for an amendment to this Ordinance has been rejected by the City Council,  
118 a new application for the same amendment shall not be accepted by the City for a period of one (1)  
119 year unless the Zoning Administrator determines that one (1) or more of the following conditions has  
120 been met:  
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- 122 A. There is a substantial change in circumstances relevant to the issues or facts considered  
123 during the review of the application.
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- 125 B. New or additional information that was not available at the time of the review is available.  
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- 127 C. The new application is materially different from the prior application.  
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129 13.2 CONDITIONAL REZONINGS

130 An applicant for a rezoning may voluntarily offer a Conditional Rezoning along with an application for  
131 rezoning before or following the public hearing for a proposed rezoning. An election to submit a Conditional  
132 Rezoning shall be pursuant to the Michigan Zoning Enabling Act (Public Act 110 of 2006, as amended) and  
133 this section.  
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13.2.1 General

- A. A Conditional Rezoning shall be a written agreement executed by the applicant and the City, shall be in recordable form, and shall be recorded with the Emmet County Register of Deeds after execution.
- B. A Conditional Rezoning may include limitations on the uses permitted on the property in question, specify lower or varying density or less intensity of development and use, or may impose more restrictive measures on the location, size, height, or other measure for buildings, structures, improvements, setbacks, landscaping, buffers, design, architecture, and other features that would otherwise be provided in this Ordinance.
- C. A Conditional Rezoning may not authorize uses or developments of greater intensity or density or which are not permitted in a proposed zoning district, nor may a Conditional Rezoning permit variations from height, area, setback, or similar dimensional requirements that are less restrictive than a proposed zoning district.
- D. A Conditional Rezoning shall include conditions that bear a reasonable and rational relationship and/or benefit to the property in question. A Conditional Rezoning may include conditions related to the use and development of the property that are necessary to:
  - 1. Serve the intended use of the property, such as improvements, extension, widening, or realignment of streets, utilities, or other infrastructure serving the site.
  - 2. Minimize the impact of the development on surrounding properties and the City overall.
  - 3. Preserve natural features and open space beyond what is normally required.

13.2.2 Content of Agreement

In addition to any limitations or use or development of the property features or preservation of property features or improvements as described above, a Conditional Rezoning shall also include the following:

- A. An acknowledgment that the applicant proposed conditional zoning voluntarily.
- B. An agreement and understanding that the property shall not be developed or used in any manner that is not consistent with a Conditional Rezoning.
- C. An agreement and understanding that the approval of a rezoning and a Conditional Rezoning shall be binding upon and ensure to the benefit of the property owner and the City and their respective heirs, successors, assigns, receivers, or transferees.
- D. An agreement and understanding that if a rezoning with a Conditional Rezoning becomes void for any reason including, but not limited to, reasons identified in this section, then no further development shall take place, and no permits shall be issued unless and until a new zoning district classification for the property has been established.

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- E. An agreement and understanding that no part of a Conditional Rezoning shall permit any activity, use, or condition that would otherwise violate any requirement or standard that is otherwise applicable in the new zoning district.
- F. A legal description of the land to which the agreement pertains.
- G. Any other provisions as are agreed upon by the parties.

13.2.3 Process

A Conditional Rezoning shall be reviewed concurrently with a petition for rezoning following the process in this Article and the following:

- A. A Conditional Rezoning may be submitted prior to or following the Planning Commission public hearing. If the agreement is submitted following the Planning Commission public hearing, it must be reviewed by the Planning Commission, and a second public hearing shall be held prior to the Planning Commission's recommendation on the rezoning and conditional rezoning to the City Council. A Conditional Rezoning shall be reviewed by the City Attorney to determine that it conforms with the requirements of this Section, this Ordinance, and the Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended, and that the Conditional Rezoning is in a form acceptable for recording with the Emmet County Register of Deeds.
- B. Following a public hearing for a proposed zoning amendment, the Planning Commission shall make a recommendation to the City Council based upon the criteria listed in this Article. In addition, following a public hearing to consider a Conditional Rezoning, the Planning Commission shall consider and address in writing findings whether a proposed Conditional Rezoning:
  - 1. Is consistent with the intent of this Article.
  - 2. Bears a reasonable and rational connection and/or benefit to the property being proposed for rezoning.
  - 3. It is necessary to ensure that the property develops in such a way that it protects the surrounding neighborhood.
  - 4. This leads to better development than would have been likely if the property had been rezoned without conditional Zoning or if the property had been left to develop under the existing zoning classification.
  - 5. Is clearly in the public interest.
- C. If a Conditional Rezoning has been offered by the applicant and recommended for approval by the Planning Commission, the City Council may approve a Conditional Rezoning as a condition to the rezoning if it meets all requirements of this Section. The Conditional Rezoning shall be incorporated by attachment or otherwise as an inseparable part of the ordinance adopted by the City Council to accomplish the requested rezoning.

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- D. If a rezoning and Conditional Rezoning are approved, the zoning classification of the rezoned property shall consist of the district to which the property has been rezoned plus a reference to the Conditional Rezoning. The City Clerk shall maintain a listing of all properties subject to the Zoning Agreement and shall provide copies of the Agreements upon request.
- E. All other requirements of this Ordinance or any other City ordinances shall apply to the property to which a Conditional Rezoning applies.

13.2.4 Expiration.

- A. Unless extended by the City Council for good cause, a rezoning and Conditional Rezoning shall expire two (2) years after adoption of the rezoning and Conditional Rezoning, unless substantial construction on the approved development of the property pursuant to building and other required permits issued by the City commences within the two-year period and proceeds diligently to completion.
- B. In the event that substantial construction on the approved development has not commenced within the aforementioned two years, or if construction and development do not proceed diligently to completion thereafter, a Conditional Rezoning and rezoning shall be void and of no effect.
- C. Should a Conditional Rezoning become void, all development on the subject property shall cease, and no further development shall be permitted. Until action satisfactory to the City is taken to bring the property into compliance with this Ordinance, the City may withhold or, following notice to the applicant and being given an opportunity to be heard, revoke permits and certificates, in addition to or in lieu of any other lawful action to achieve compliance.
- D. Notwithstanding the above, if the property owner applies in writing for an extension of a rezoning and a Conditional Rezoning at least 30 days prior to the expiration date, the City Council may, in its sole discretion, grant an extension of up to one year. Future extensions may be granted, although the number of previous extensions granted to a particular rezoning and Conditional Rezoning shall be considered by the City Council.

13.2.5 Reversion of Zoning

If a rezoning and conditional rezoning becomes void as outlined above, then the property's zoning classification shall be reverted back to its previous zoning classification. The reversion process shall be initiated by the City Council by requesting that the Planning Commission proceed with consideration of rezoning of the land to its former zoning classification. The procedure for considering and making this reversionary rezoning shall be the same as applies to all other rezoning requests, including the notice and hearing as required by the Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended. No building or other permit shall be issued or valid during the process described in this subsection.

271 13.2.6 Continuation

272 Provided that all development and/or use of the property in question is in compliance with a  
273 Conditional Rezoning, use, or development authorized there may be continued indefinitely, provided  
274 that all terms of a Conditional Rezoning continue to be adhered to.

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276 13.2.7 Amendment

277 A. During an initial two-year period, or during any extension granted by the City as permitted in  
278 this Article, the City shall not add to or alter a Conditional Rezoning, even with the  
279 landowner's consent.

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281 B. A Conditional Rezoning may be amended after the expiration of an initial two-year period and  
282 any extensions, in the same manner as was prescribed for the original rezoning and  
283 Conditional Rezoning.

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285 13.2.8 Violation of Agreement

286 Failure to comply with a Conditional Rezoning at any time after approval will constitute a breach of  
287 the agreement and also a violation of this Ordinance. Further use of the property may be subject to  
288 legal remedies available to the City. Any violation of a Conditional Rezoning that is not cured within  
289 30 days after written notice of the violation is given shall permit the City Council, in its sole discretion,  
290 to declare a Conditional Rezoning void ab initio and of no effect.

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292 13.2.9 Subsequent Rezoning of Land

293 Nothing in a Conditional Rezoning, nor any statement or other provision, shall prohibit the City from  
294 later rezoning all or any portion of the property that is the subject of a Conditional Rezoning to  
295 another zoning classification. Any rezoning shall be conducted in compliance with the Michigan  
296 Zoning Enabling Act (Public Act 110 of 2006), as amended.

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298 13.2.10 Failure to Offer Conditions

299 The City shall not require an owner to offer conditions as a requirement for rezoning. The lack of an  
300 offer of conditions shall not affect the owner's rights under this Ordinance.

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302 13.3 SEVERABILITY

303 If any article, section, subsection, sentence, clause, phrase, or portion of this Ordinance is held to be invalid  
304 or unconstitutional by any court of competent jurisdiction, the City intends said portion to be disregarded,  
305 reduced, and/or revised so as to be recognized to the fullest extent possible by law. The City further states  
306 that it would have passed and adopted what remains of this Ordinance following the removal, reduction, or  
307 revision of any portion so found to be invalid or unconstitutional.