

**ARTICLE 17**  
**REZONING, ZONING ORDINANCE, AND MASTER PLAN AMENDMENT REVIEW**

**Sec. 17.01      Initiation of Rezoning, Zoning Ordinance Text, and Master Plan Amendments**

- a.      The City Council may, from time to time, amend, modify, supplement or revise the zoning district boundaries shown on the official zoning map (rezoning) or the provisions of this Ordinance. An amendment to the zoning district boundaries contained on the official zoning map (rezoning) may be initiated by the City Council, the Planning Commission, or by the owner or owners of property which is the subject of the proposed amendment. Amendments to the text of this Ordinance may be initiated by the City Council, the Planning Commission, or by petition of one (1) or more residents or property owners of the City. All proposed amendments to the official zoning map or the provisions of this Ordinance shall be referred to the Planning Commission for public hearing and recommendation to the City Council, prior to consideration thereof by the City Council.
  
- b.      The Planning Commission may amend the future land use designations shown on the City of Fenton Master Plan. An amendment may be initiated by the Planning Commission or by petition of one (1) or more residents or property owners of the City.

**Sec. 17.02      Application Procedure**

- a.      An amendment to the official zoning map, this Ordinance or the Master Plan, except those initiated by the City Council or Planning Commission, shall be initiated by submission of a completed application on a form supplied by the City, including an application fee, which shall be established from time to time by resolution of the City Council.
  
- b.      In the case of an amendment to the official zoning map (rezoning), the following information shall accompany the application:
  - 1.      A legal description and street address of the subject property, together with a map identifying the subject property in relation to surrounding properties.
  - 2.      The name, signature and address of the owner of the subject property, a statement of the applicant's interest in the subject property if not the owner in fee simple title, or proof of consent from the property owner.
  - 3.      The existing and proposed zoning district designation of the subject property.
  - 4.      A site analysis site plan illustrating existing conditions on the site and adjacent properties; such as woodlands, wetlands, soil conditions, steep sloped, drainage patterns, views, existing buildings, any sight distance limitations and relationship to other developed sites and access points in the vicinity.
  - 5.      A conceptual plan demonstrating that the site could be developed with representative uses permitted in the requested zoning district meeting requirements for setbacks, wetland buffers access spacing, any requested service drives and other site design factors.
  - 6.      A written environmental assessment describing site features and anticipated impacts created by the host of uses permitted in the requested zoning districts.
  - 7.      A traffic impact analysis shall be provided if any use permitted in the requested zoning district could generate 100 or more peak hour directional trips, or 1,000 or more vehicle trips per day; the traffic study should contrast the daily and peak hour trip generation rates for representative use in the current and requested zoning district; the determination of representative uses shall be made by the Planning Commission with input from city staff and consultants.
  - 8.      A written description of how the requested rezoning meets *Section 17.04 Criteria for Amendment of the Official Zoning Map (Rezoning)*.

- c. In the case of an amendment to the official zoning map (rezoning), the site must be staked to clearly indicate the location of the requested amendment. Flagged stakes shall be placed at each parcel corner.
- d. In the case of an amendment to the Master Plan or this Ordinance, other than an amendment to the official zoning map, a general description of the purpose and intent of the proposed amendment shall accompany the application form.

**Sec. 17.03 Rezoning, Zoning Ordinance, and Master Plan Amendment Procedure**

- a. Upon initiation of a rezoning, zoning ordinance text amendment or master plan amendment, a public hearing on the proposed amendment shall be scheduled before the Planning Commission in accordance with *Section 26.05 Public Hearings* and in accordance with the provisions of the Michigan Zoning Enabling Act (Public Act 110 of 2006), and Michigan Public Act 285 of 1931, as amended.
- b. Following the public hearing, the Planning Commission shall identify and evaluate all factors relevant to the petition and shall report its findings and recommendation to the City Council, except in the case of a Master Plan amendment. In the case of an amendment to the official zoning map (rezoning), the Planning Commission shall consider the criteria contained in *Section. 17.04 Criteria for Amendment of the Official Zoning Map (Rezoning)*, below, in making its finding and recommendation.
- c. Following receipt of the findings and recommendation of the Planning Commission, the City Council shall consider the proposed amendment. In the case of an amendment to the text of this Ordinance, the City Council may modify or revise the proposed amendment as recommended by the Planning Commission, prior to enactment. In the case of an amendment to the official zoning map (rezoning), the City Council shall approve or deny the amendment, which may be based on consideration of the criteria contained in *Section 17.04 Criteria for Amendment of the Official Zoning Map (Rezoning)*, below.
- a. No petition for rezoning, zoning ordinance text amendment or Master Plan amendment that has been denied by the City Council or Planning Commission (Master Plan amendment) shall be resubmitted for a period of one (1) year from the date of denial except on the grounds of new evidence or proof of changed conditions relating to all of the reasons noted for the denial found to be valid by the Planning Commission.

**Sec. 17.04 Criteria for Amendment of the Official Zoning Map (Rezoning)**

In considering any petition for an amendment to the official zoning map (rezoning), the Planning Commission shall and the City Council may consider the following criteria in making its findings, recommendations, and decision:

- a. Consistency with the goals, policies and Future Land Use Map of the City of Fenton Master Plan, including any subarea or corridor studies. If conditions have changed since the City of Fenton Master Plan was adopted, the consistency with recent development trends in the area.
- b. Compatibility of the site's physical, geological, hydrological and other environmental features with the potential uses allowed in the proposed zoning district.
- c. Evidence the applicant cannot receive a reasonable return on investment through developing the property with one (1) of the uses permitted under the current zoning.

- d. The compatibility of all the potential uses allowed in the proposed zoning district with surrounding uses and zoning in terms of land suitability, impacts on the environment, density, nature of use, traffic impacts, aesthetics, infrastructure, and potential influence on property values.
- e. The capacity of city infrastructure and services sufficient to accommodate the uses permitted in the requested district without compromising the "health, safety and welfare" of the City.
- f. The apparent demand for the types of uses permitted in the requested zoning district in the City in relation to the amount of land in the City currently zoned to accommodate the demand.
- g. Where a rezoning is reasonable given the above criteria, a determination shall be made that the requested zoning district is more appropriate than another district or amending the list of permitted or special land uses within a district.

**Sec. 17.05 Amendments Required to Conform to Court Decree**

Any amendment for the purpose of conforming to a decree of a court of competent jurisdiction shall be adopted by the City Council and published, without necessity of a public hearing or referral thereof to any other commission or agency.

**Sec. 17.06 Conditional Rezoning**

- a. **Conditional Rezoning.** An applicant for a rezoning may voluntarily offer a Conditional Rezoning along with an application for rezoning before or following the public hearing for a proposed rezoning. An election to submit a Conditional Rezoning shall be pursuant to the Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended, and this Section.
  - 1. 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 Genesee County Register of Deeds after execution.
  - 2. 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 than would otherwise be provided in this Ordinance.
  - 3. 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.
  - 4. 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:
    - (a) Serve the intended use of the property such as improvements, extension, widening, or realignment of streets, utilities, or other infrastructure serving the site.
    - (b) Minimize the impact of the development on surrounding properties and the City overall.
    - (c) Preserve natural features and open space beyond what is normally required.
- b. **Content of Agreement.** In addition to any limitations on use or development of the property or preservation of property features or improvements as described above, a Conditional Rezoning shall also include the following:

1. An acknowledgement that the Conditional Rezoning was proposed voluntarily by the applicant.
  2. An agreement and understanding that the property shall not be developed or used in any manner that is not consistent with a Conditional Rezoning.
  3. An agreement and understanding that the approval of a rezoning and a Conditional Rezoning shall be binding upon and inure to the benefit of the property owner and the City, and their respective heirs, successors, assigns, receivers or transferees.
  4. 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.
  5. 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.
  6. A legal description of the land to which the agreement pertains.
  7. Any other provisions as are agreed upon by the parties.
- c. **Process.** A Conditional Rezoning shall be reviewed concurrently with a petition for rezoning following the process in *Section 17.03 Rezoning, Zoning Ordinance, and Master Plan Amendment Procedure* and the following:
1. 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 Planning Commission and a second public hearing shall be held prior to the Planning Commission making its 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 Genesee County Register of Deeds.
  2. 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 *Section 17.04 Criteria for Amendment of the Official Zoning Map (Rezoning)*. In addition, following a public hearing to consider a Conditional Rezoning, the Planning Commission shall consider and address in written findings whether a proposed Conditional Rezoning:
    - (a) Is consistent with the intent of this Article.
    - (b) Bears a reasonable and rational connection and/or benefit to the property being proposed for rezoning.
    - (c) Is necessary to insure that the property develops in such a way that protects the surrounding neighborhood.
    - (d) Leads to a better development than would have been likely if the property had been rezoned without a Conditional Rezoning, or if the property were left to develop under the existing zoning classification.
    - (e) Is clearly in the public interest.
  3. 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 subsection 2 above. 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.
  4. 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 Zoning Map shall specify the new district, plus a small letter "a" to indicate that the property is subject to a Conditional Rezoning (i.e., "GBD a"). The City Clerk shall maintain a listing of all properties subject to Zoning Agreements and shall provide copies of the Agreements upon request.

5. An approved Conditional Rezoning shall be recorded with the Genesee County Register of Deeds.
6. Any uses proposed as part of a Conditional Rezoning that would otherwise require approval of a special land use or site plan approval shall be subject to the applicable review and approval requirements of *ARTICLE 14 SPECIAL LAND USES* and *ARTICLE 16 SITE PLAN REVIEW*.
7. All other requirements of this Ordinance or any other City ordinances shall apply to the property to which a Conditional Rezoning applies.

d. **Expiration**

1. 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 (2) year period and proceeds diligently to completion.
2. In the event that substantial construction on the approved development has not commenced within the aforementioned two (2) years, or if construction and development does not proceed diligently to completion thereafter, a Conditional Rezoning and rezoning shall be void and of no effect.
3. 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.
4. Notwithstanding the above, if the property owner applies in writing for an extension of a rezoning and a Conditional Rezoning at least thirty (30) days prior to the expiration date, the City Council may, in its sole discretion, grant an extension of up to one (1) 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.

e. **Reversion of Zoning.** If a rezoning and Conditional Rezoning become void as outlined above, then the zoning classification of the property shall revert 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), and this Ordinance. No building or other permit shall be issued or valid during the process described in this subsection.

f. **Continuation.** Provided that all development and/or use of the property in question is in compliance with a Conditional Rezoning, a use or development authorized there under may continue indefinitely, provided that all terms of a Conditional Rezoning continue to be adhered to.

g. **Amendment**

1. During an initial two (2) year period, or during any extension granted by the City as permitted above, the City shall not add to or alter a Conditional Rezoning, even with the landowner's consent.
2. A Conditional Rezoning may be amended after the expiration of an initial two (2) year period

and any extensions, in the same manner as was prescribed for the original rezoning and Conditional Rezoning.

- h. **Violation of Agreement.** Failure to comply with a Conditional Rezoning at any time after approval will constitute a breach of the agreement and also a violation of this Ordinance and further use of the property may be subject to legal remedies available to the City. Any violation of a Conditional Rezoning that is not cured within thirty (30) days after written notice of the violation is given shall permit the City Council, in its sole discretion, to declare a Conditional Rezoning void ab initio and of no effect
- i. **Subsequent Rezoning of Land.** Nothing in a Conditional Rezoning, nor any statement or other provision, shall prohibit the City from later rezoning all or any portion of the property that is the subject of a Conditional Rezoning to another zoning classification. Any rezoning shall be conducted in compliance with this Ordinance and the Michigan Zoning Enabling Act (Public Act 110 of 2006).
- j. **Failure to Offer Conditions.** The City shall not require an owner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect the owner's rights under this Ordinance.