

401 PROCEDURES

401.1 AMENDING THE TEXT

As provided for in KRS 100.211, a proposal to amend the text of Article IV, The Use of Land and Structures, may originate with the Planning Commission or the City Council. Regardless of the origin of the proposed amendment, it shall be referred to the Planning Commission before adoption. The Planning Commission shall hold a public hearing after notice as required by K.R.S. 424, and make a recommendation as to the text of the amendment, and whether the text amendment shall be approved or disapproved, stating the reasons for its recommendation. In the case of a proposed amendment originating with the City Council, the Planning Commission shall make its recommendations within sixty (60) days of the date of its receipt of the proposed amendment. It shall take an affirmative vote of a majority of the City Council to adopt the proposed amendment.

401.2 AMENDING THE OFFICIAL ZONING MAP

A. Prior to application for amendment to the Official Zoning Map, the applicant is encouraged to have a conference with the Codes Administrator to discuss the proposed land use change.

B. Amendment application. A proposal to amend the Official Zoning Map may originate with the Planning Commission, the City Council, or the owner of the property in question. The application for amendment shall contain at least the following items:

1. Interest and Ownership. The applicant's name, address, and interest in the application and the name, address, and interest of every person, firm, or corporation represented by the applicant in the application, the name and signature of the owner or owners of the entire land area to be included within the proposed district and all encumbrances of such land and the names and addresses of owners of all adjacent property. If the applicant is not the owner, then the owner shall submit an affidavit certifying the person acting as a representative has the authority to act in his/her behalf.
2. Legal description and/or survey plat which contains metes and bounds that meet or exceed the current standards of practice for professional land surveyors in Kentucky. All zoning changes, irregardless of the legal description and/or survey plat, shall be construed as extending to the centerline(s) of adjacent public streets.
3. Reason for the amendment. The reason and justification for the proposed amendment shall be specifically set out and be consistent with the provisions of KRS 100.212.
4. Effect of the amendment. A statement giving the nature, description, and effect of the proposed amendment on surrounding land uses and properties must be included.
5. A development plan may be required by the Planning Commission in conjunction with the application, and shall be reviewed in keeping with Section 401.3. If a

development plan is approved as part of the land use map amendment, a certificate of land use restriction must be filed in the County Clerk's Office.

6. No less than ten (10) days before the hearing on a proposed zoning map amendment by any person or entity other than the City of Berea, the applicant shall file proposed findings of fact with the Codes Administrator and the Corporation counsel, along with a summary of proposed testimony and a listing of proposed exhibits.

C. Planning Commission Action:

1. Following receipt of an application, the Planning Commission shall fix a reasonable time for a public hearing. Public notice shall be given in accordance with KRS Chapter 424; such notice shall include publication in a local newspaper of general circulation at least once and shall be made not less than seven (7) days nor more than twenty-one (21) days before the date of the hearing. The applicant shall also give notice at least 14 days in advance of the hearing by first class mail, return receipt requested, to the owners of the adjacent property. Adjacent property includes property contiguous to the site in question as well as property directly across the roadway. Copies of all returned receipts and affidavits of publication shall be presented to the Planning Commission as evidence of compliance prior to the hearing. In addition, the applicant shall post a notice on the property for fourteen (14) consecutive days. This notice shall be in compliance with KRS Chapter 100.212 and with any requirements established by the Planning Commission.
2. If the property that is proposed for a change in land use classification adjoins property in a different planning unit, notice of the hearing shall be given at least fourteen (14) days in advance of the hearing by first class mail to the Planning Commission of that planning unit.
3. If the City proposes to annex unincorporated or accept the transfer of incorporated territory, it may amend its comprehensive plan and the Official Zoning Map to incorporate and establish land use districts for the property proposed for annexation. If the City elects to follow this procedure, the Planning Commission shall hold a public hearing after the adoption of the ordinance, stating the City's intention to annex and prior to final action taken on the ordinance of annexation, for the purpose of adopting the comprehensive plan amendment and making its recommendations as to the classification of the land which will be effective for the property upon its annexation. Notice setting forth the time, date, location, and purpose for the public hearing shall be published as required by KRS Chapter 424 and shall be given to the owners of all properties within the area proposed for annexation and to adjoining property owners in conjunction with KRS 100.212(2). The City Council shall take final action on the recommendations of the Planning Commission prior to adoption of the ordinance of annexation and shall include in the ordinance of annexation a map showing the land use district which will be effective for the annexed property.

If the City elects not to follow this procedure, the newly annexed territory shall remain subject to the same land use restrictions as applied to it prior to annexation, until those restrictions are changed by an amendment to the Official Zoning Map or other regulations in accordance with KRS 100.209.

4. The requirements of this Development Ordinance are based on recommendations included in the Berea Comprehensive Plan. KRS 100.212 requires that before any amendment to the Official Zoning Map is granted, the Planning Commission must first find that the proposed map amendment is in agreement with the Comprehensive Plan, or in the absence of such a finding, that one or more of the following apply:

- (A) That the original land use classification given to the property was inappropriate, and that the proposed land use classification is appropriate, or
- (B) That there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan, and which have substantially altered the basic character of such area.

5. The Planning Commission shall hold a public hearing and shall make a finding of fact which shall be recorded in the minutes and records of the Planning Commission. The Planning Commission may vote to approve, reject, or defer action on the proposed amendment. After voting, the Planning Commission shall make a report of its recommendations which shall include findings of fact, and forward its finding of fact and recommendation in writing to the City Council.

The findings of fact shall include a summary of the evidence and testimony presented by the proponents and opponents of the proposed amendment. A tie vote shall be subject to further consideration by the Planning Commission not to exceed thirty (30) days, at the end of which if the tie has not been broken, the application shall be forwarded to the City Council without a recommendation for approval or disapproval (KRS 100.211).

6. No application for subdivision plat approval, development plat approval, or zoning map amendment, shall be reconsidered by the Planning Commission, or resubmitted to the Planning Commission within six (6) months of the meeting where such application is denied, unless:

- a. The applicant files an affidavit with the request for reconsideration or the resubmitted application setting out and demonstrating that the prior action of the Planning Commission failed to consider essential evidence making the original determination erroneous under the

appropriate statutory standard, or subdivision regulation standard, and the Planning Commission;

b. The new application is substantially different; or

c. There has been a change of conditions or law under which the denial was made.

In any such event, the Planning Commission must affirmatively vote to permit the resubmittal or reconsideration, and specifically set out the reasons thereof.

7. Action by the City Council:

(1) Recommendation of approval of requested zoning map amendment: Upon receipt of a Report of the Planning Commission recommending approval of a proposed zoning map amendment, the City Administrator shall place the matter on the agenda of the next regularly scheduled Council meeting for consideration of the Council. The Council may (a) accept the recommendation of the Planning Commission without a hearing or only argument-type hearing; (b) review the record made before the Planning Commission and make its own adjudicative facts which may differ from those of the Commission; or (c) hold its own trial type hearing and make its own adjudicative facts which may differ from those made by the Planning Commission. If the Planning Commission recommends the requested map amendment, the City Council can override the recommendation by a majority vote of the membership of the legislative body.

(2) Recommendation of disapproval of requested zoning map amendment: Upon receipt of a Report of the Planning Commission recommending disapproval of a proposed zoning map amendment, the matter shall not be submitted to the Council unless within thirty (30) days of the final action of the Planning Commission, the applicant or two (2) members of the City Council requests consideration by the Council. In such event, the Council shall determine whether to (a) accept the recommendation of the Planning Commission without a hearing, or (b) hold an argument-type hearing for review of the recommendation and the record made before the Planning Commission and make its own adjudicative facts which may differ from those of the Commission; or (c) hold its own trial type hearing and make its own adjudicative facts which may differ from those made by the Planning Commission.

(3) In the event that the Council determines to hold an argument-type hearing, the matter shall be placed on the next regularly scheduled Council meeting agenda, and (i) the Council members shall be provided record made at the Planning Commission; and specifically the application, minutes of the meeting, and the Report of the Planning Commission; (ii) shall have the opportunity to, but is not required to, review the videotape of the hearing where evidence was presented, and the opportunity to review any documentary evidence presented to the Commission;

and (iii) the Council may hear arguments or statements in support or against the recommendation of the Planning Commission.

(4) In the event that the Council determines to hold its own trial-type hearing, the matter shall be placed on the next regularly scheduled Council meeting agenda, and the City Administrator shall advertise the matter for a public hearing. The Council members shall be provided with the record made at the Planning Commission; and specifically the application, minutes of the meeting, and the report of the Planning Commission, and the hearing shall proceed *de novo* with the applicant providing evidence and arguments in support of the proposed map amendment, and opponents afforded the opportunity to present evidence and arguments in opposition to the proposed map amendment.

8. When an application for a land use map amendment has been disapproved by the legislative body, an additional request for a change in land use for that tract of land or land included in that tract shall not be filed within six (6) months of the date of disapproval.