

**AGENDA-REGULAR MEETING  
STERLING PLANNING COMMISSION**

114 N. Broadway, Sterling, Kansas  
February 20, 2025, at 5:15 P.M.

**A. CALL TO ORDER**

**B. APPROVAL OF THE AGENDA**

**C. CITIZEN COMMENTS**

**D. APPOINTMENTS, PROCLAMATIONS, RECOGNITIONS, & NOMINATIONS**

1. Appoint the Chairman of the Planning Commission for 2025.
2. Appoint the Vice-Chairman for the Planning Commission for 2025.
3. Appoint the Secretary for the Planning Commission for 2025.

**E. CONSENT AGENDA**

Items on the Consent Agenda are considered by staff to be routine business items. Approval of the items may be made by a single motion, seconded, and a majority vote with no separate discussion of any item listed. Should a member of the Planning Commission desire to discuss any item, the item will be removed from the Consent Agenda and considered separately.

1. Approval of minutes
  - a. Planning Commission Regular Meeting August 15, 2024.

**F. OLD BUSINESS**

**G. NEW BUSINESS**

1. Hold public hearing on proposed zoning change of property located at the southwest corner of North Broadway Avenue and Avenue U from County Agricultural District (AG) to City Industrial District (I-1).

**H. CITY MANAGER'S REPORT**

**I. PLANNING COMMISSION COMMENTS**

**J. EXECUTIVE SESSION**

**K. ADJOURNMENT**

**NOTICE: SUBJECT TO REVISIONS**

It is possible that sometime between 4:30 and 5:15 pm immediately prior to this meeting, during breaks, and directly after the meeting, a majority of the Planning Commission may be present in the commission chambers or lobby of City Hall. No one is excluded from these areas during those times.

## **D.1 Appoint the Chairman of the Planning Commission for 2025.**



## **D.2 Appoint the Vice-Chairman of the Planning Commission for 2025.**



## **D.3 Appoint the Secretary of the Planning Commission for 2025.**



STERLING PLANNING COMMISSION  
REGULAR MEETING  
MINUTES  
8/15/2024

The Board of Planning Commissioners of the City of Sterling met in regular session Thursday, Jul 20, 2024, at 5:15 P.M in the meeting room at City Hall. Those present were Jeff Laudermilk (Chairman); Jed Miller (Vice-Chairman), Brennan Stelling (Secretary), Joe Jacobs, James Silman, and David Wilson (Planning Commissioners); Ian Hutcheson (City Manager).

James Decker and Dan Garber were present to speak on the Decker Addition final plat.

Chairman Laudermilk called the meeting to order.

**APPROVAL OF AGENDA:** Commissioner Wilson moved, and Commissioner Silman seconded to approve the agenda. The motion carried 5-0.

**CITIZEN COMMENTS:** None.

**APPOINTMENTS, PROCLAMATIONS, RECOGNITIONS, & NOMINATIONS:** None

**CONSENT AGENDA:**

1. Approved 7/18/2024 Regular Meeting Minutes.

Vice-Chairman Miller moved, and Secretary Stelling seconded to approve the Consent Agenda. Motion carried 5-0.

**OLD BUSINESS:** None

**NEW BUSINESS:**

1. Approve final plat for the Decker Addition.
  - The Decker Addition will consist of a new “barndominium” type dwelling and a gravel driveway located on a parcel of land just east of 112 S 1<sup>st</sup> St.
  - Articles 4 and 5 of the Subdivision regulations outline the contents of and procedures for approving final plats.
  - The Subdivision Administrator has reviewed the materials submitted by the applicants and found them to satisfy the content requirements for final plats.
  - Mr. Garber noted that a protective covenant can be filed to outline the maintenance responsibilities regarding the joint access utility easement.
  - Mr. Garber mentioned that there will be a 20-25-foot setback between the building and all easements.
  - The City’s planning and zoning consultant David Foster noticed that there is a mistaken property line marker on the final plat. Mr. Garber responded that the mistaken marker will be removed from the final plat.
  - Mr. Hutcheson noted that the City Attorney’s certificate on a plat is only needed if the property in question is being annexed into the City. Since the property on which the Decker Addition is located is already within the city limits, this certificate is not needed.
  - Mr. Decker mentioned that there is no mortgage holder on the property.

**Minutes**

**8/15/2024**

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- Vice-Chairman Miller moved and Commissioner Wilson seconded to approve the preliminary plat for the Decker Addition. The motion carried by the following vote: Laudermilk "yea", Jacobs "yea", Silman "yea".

**CITY MANAGER'S REPORT:** None

**PLANNING COMMISSION COMMENTS**

- Commissioner Silman discussed how he believes that the Planning Commission should be present for meetings with a planning and zoning impact, such as the recent meeting for the planned Nottingham Addition.

**EXECUTIVE SESSION:** None.

**ADJOURNMENT:** There being no further business to come before the Commission, it was moved and seconded to adjourn. The motion carried 5-0.

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Jeff Laudermilk, Chairman

**Agenda Item G.1**

**City of Sterling  
Planning Commission Meeting  
February 20, 2025**

**TO:** Planning Commission  
**SUBJECT:** Hold public hearing on proposed zoning change of property located at the southwest corner of North Broadway Avenue and Avenue U from County Agricultural District (AG) to City Industrial District (I-1).  
**INITIATED BY:** Zoning Administrator  
**PREPARED BY:** Zoning Administrator  
**AGENDA:** New Business

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**Background:** On March 28, 2024, a development agreement for the construction of a new manufacturing and headquarters facility operated by KMW in Sterling was signed between the City, KMW, Ltd. and Rice County. On July 25, the land on which the new facility will be located was purchased by the City. On August 19, the unincorporated land which was previously within Rice County was annexed into the city limits. The quadrant of land is in the far northwest of the city and is bounded to the north by Avenue U, to the east by N. Broadway Avenue, to the south by an east-west property line extending approximately 1,500 feet north from W. Forest Avenue, and to the west by 11<sup>th</sup> Street/15<sup>th</sup> Road. In order to be utilized as the site of a manufacturing facility, the portion of the quadrant upon which the initial phase of development will be located will need to be zoned in the Industrial (I-1) District.

**Analysis:** On January 27, 2025, the City applied for a change of zoning district classification under case number Z-001-2025 (see Exhibit A) for a portion of the quadrant located in the northeast corner upon which the initial phase of the KMW development will be located (see map in Exhibit B). Per Section 3-103(I) of the City's Zoning Regulations, all land that is annexed into the city from within Rice County retains its current zoning classification until an application to rezone the land to a City zoning classification is approved. The land is currently zoned County Agricultural (AG), and the City's application proposes to change the zoning district for the portion to City Industrial (I-1) to facilitate the development of the KMW expansion.

As shown in Exhibit B, only a portion of the entire quadrant acquired by the City is proposed for a zoning district classification change. The portion in question is a 2,520,000 square foot rectangular area in the northeastern section of the quadrant at the corner of N. Broadway Avenue and Avenue U. It is the intention of the City to retain the County AG zoning classification for the remaining area of the quadrant, until such time as further industrial development is planned to extend into these areas.

Article 11 of the Zoning Regulations, included in Exhibit C, discusses the process for approving amendments to the regulations, including amendments to zoning district classifications. A public hearing must be held at which the proposed amendments may be

discussed by interested parties. Notice of the public hearing must be published in the City's official newspaper and mailed to impacted property owners within a certain distance of the property at least 20 days prior to the public hearing. Notice of the public hearing for Z-001-2025 was published in the Sterling Bulletin on January 30 and notices were mailed to the impacted property owners on January 31.

For action on zoning amendments, a quorum of more than one-half of the membership of the planning Commission is required. Failure to make a recommendation shall be considered a recommendation of disapproval.

Within 14 days of the public hearing and the voting on a proposed amendment, the Planning Commission will submit a report to the City Commission which contains the Planning Commission's recommendation. The report must contain statements as to the current and proposed district classifications, the applicant's reasons for requesting the reclassification and a discussion of the factors relevant to the Planning Commission's recommendation. The minutes of the meeting may be submitted in lieu of a report.

Section 11-100(H) of the Zoning Regulations discusses the review criteria for rezoning amendments. The inclusion of the criteria deemed appropriate to the case must be included in the Planning Commission's report to the City Commission.

Regardless of the Planning Commission's recommendation on a rezoning case, if 20% or more of the property owners in the rezoning area or within the official area of notification file written protest of the rezoning case, the effectuating ordinance of the City Commission can only be approved by at least a 3/4 majority vote of that body's membership. The City Commission, having received the report of the Planning Commission on the proposed rezoning case, may adopt the Planning Commission's recommendation through an ordinance, override the recommendation by a 2/3 majority vote, or return the recommendation to the Planning Commission for re-consideration.

**Financial:** A small publication fee of the notice of the public hearing in the newspaper, and postal charges in the mailing of notice to impacted property owners were incurred.

**Legal Considerations:** None.

**Recommendations/Actions:** It is recommended the Planning Commission:

1. Open the public hearing.
2. Close the public hearing.
3. Recommend that the City Commission approve the zoning change of property located at the southwest corner of North Broadway Avenue and Avenue U from County Agricultural District (AG) to City Industrial District (I-1) (**VOICE**).

**Attachments:**

Exhibit A – Application for change of zoning district classification (3 pages)

Exhibit B – Map of property for proposed zoning district change (1 page)

Exhibit C – Zoning Regulations, Article 11 Amendments (10 pages)

**APPLICATION FOR CHANGE OF ZONING DISTRICT CLASSIFICATION**

This is an application for a change of zoning district classification. The form must be completed in accordance with directions on the accompanying instructions and filed with the Zoning Administrator at:

Sterling City Hall  
114 N. Broadway  
Sterling, KS 67579  
or FAX: (620) 278-2866

**AN INCOMPLETE APPLICATION CANNOT BE ACCEPTED.**

1. List name(s) of Applicant(s) and/or his/her Agent(s).

The owners of all property requesting to be rezoned must be listed.

Name of Applicant: City of Sterling

Address: 114 N Broadway Ave.

Phone: (620) 278-3423 Email: jackson@sterling-kansas.com

Name of Agent, if any: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Name of Applicant: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Name of Agent, if any: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Use a separate sheet, if necessary, for names of additional Applicants.

2. The Applicant hereby requests a change of zoning from the County Agricultural (A-1) District to the City Industrial (I-1) District, for property legally described as Lot(s) \_\_\_\_\_ of Block(s) \_\_\_\_\_ in the \_\_\_\_\_ (Addition) (Subdivision).

(If appropriate, additional lots/blocks/subdivision descriptions, or metes and bounds descriptions, may be provided in the space below or on an attached sheet.)

The northeast section of Section 16, Township 21, Range 8 west of the 6th Principle Meridian, Rice County, Kansas, located 1,400 feet from the eastern boundary of the property in width and 1,800 feet from the northern boundary in depth.

3. Dimensions of the property are 1,800 feet in depth by 1,400 feet in width, and 57.85 acres (round to the nearest tenth) or 2,520,000 square feet in area.

4. Describe the general location of the property. (Use appropriate section.)

- The address is \_\_\_\_\_
- At the SW (NW, NE, SW, SE, etc.) corner of N. Broadway (Street) and Avenue U (Street).
- On the \_\_\_\_\_ (N, S, E, W, etc.) side of \_\_\_\_\_ (Street), between \_\_\_\_\_ (Street) and \_\_\_\_\_ (Street).

5. Is this property part of a recorded plat?  Yes  No

6. The property is presently used for agriculture, and this change of zoning is requested for the following reasons: to facilitate an industrial usage in connection to the KMW, Ltd. expansion project, which will be located at this site.

7. I (We) the Applicant(s), acknowledge receipt of the instructions, and further state that I (we) have read the material. If an Agent, I further state that I have or will provide the owner(s) of the property for which the change of zoning is requested an explanation of or copy of this material. I (We) realize that this application cannot be processed unless it is complete, and is accompanied by a current real property ownership list for the notification area, and the fee.

Signature: , Applicant

Print name: Jessica Dobson, City Clerk

Date: January 27<sup>th</sup>, 2025

Signature: \_\_\_\_\_, Agent (if any)

Print name: \_\_\_\_\_

Date: \_\_\_\_\_, 20 \_\_\_\_\_

Signature: \_\_\_\_\_, Applicant

Print name: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Signature: \_\_\_\_\_, Agent (if any)

Print name: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Signature: \_\_\_\_\_, Applicant

Print name: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Signature: \_\_\_\_\_, Agent (if any)

Print name: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

*Use a separate sheet, if necessary, for names of additional Applicants.*

• List of affected landowners attached:  Yes  No

**OFFICE USE ONLY**

This application was received at 12:00 : pm (am, pm)  
on January 27, 2025  
by the Zoning Administrator acting for the Planning Commission.

It has been checked and found to be complete, and accompanied by the required real property ownership list, development plan for certain districts, and the fee of \$ —.

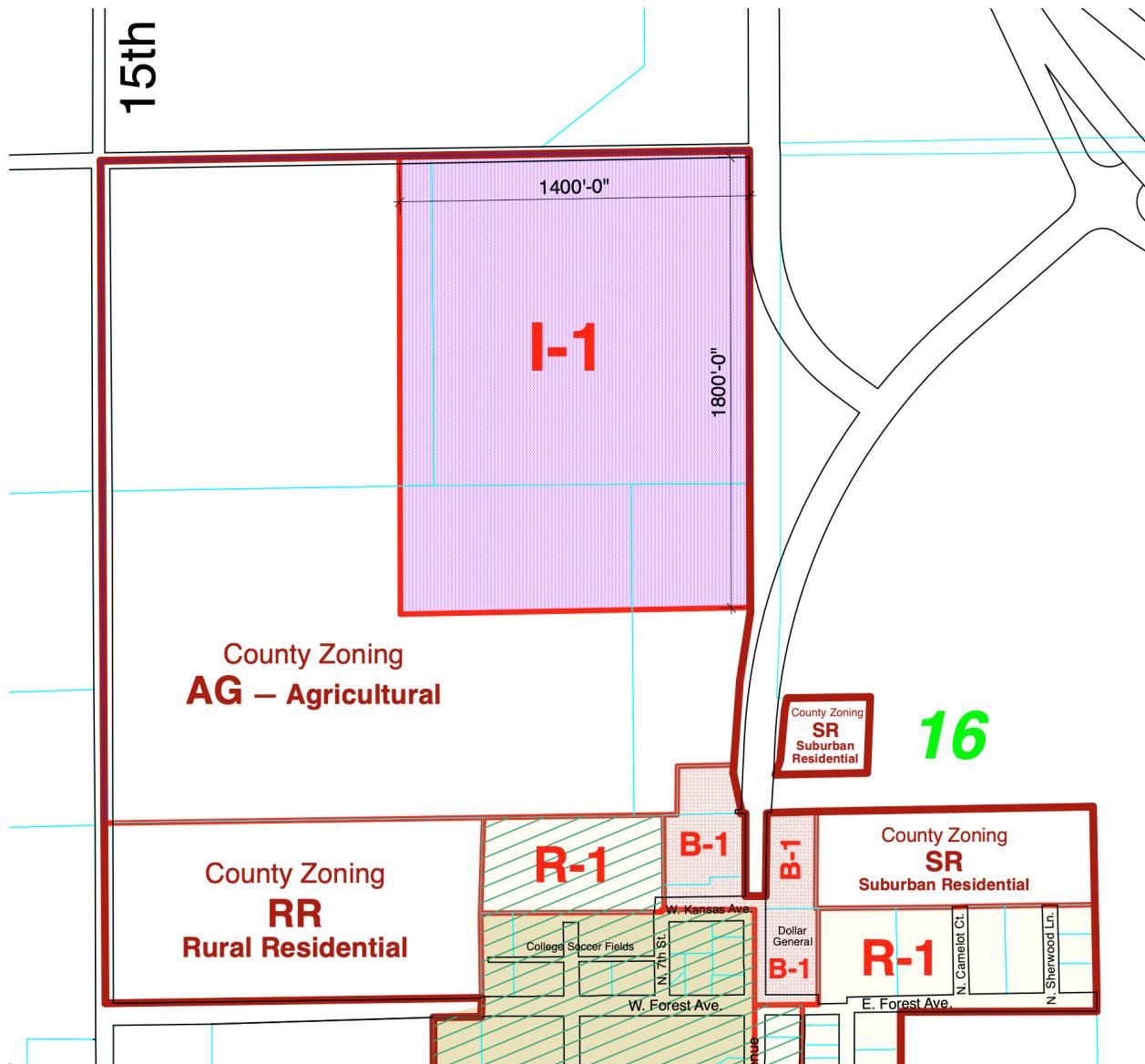
Signature: , Zoning Administrator

Print name: Ian Hutcheson

Date: January 27, 2025

**Provide copy to:**

- Applicant(s) and/or Agent(s)



## ARTICLE 11. AMENDMENTS

100 **General Provisions for Amendments and Special Uses.** These regulations and the districts created under the authority of these regulations may be amended from time to time by the Planning Commission following a public hearing and the approval by the Governing Body. No such amendment shall be adopted except in accordance with the procedures of this Article 11. Special use applications are not amendments, but are processed for the hearing in the same manner. (See Section 11-101 for special uses.)

- A. **Proposal.** Amendments or special uses may be proposed: (1) by the Governing Body, (2) by the Planning Commission or (3) upon application by, or on behalf of the owner of the property affected, but only in accordance with the procedure set forth in Section 11-100B. When the Governing Body proposes an amendment or special use, it shall transmit its proposal to the Planning Commission for a public hearing and recommendation thereon. (See Section 11-100D3 for special notice of hearing procedure for Governing Body and Planning Commission applications.)
- B. **Application.** When the owner of the property affected proposes an amendment to any of these regulations or to any zoning district created thereby or applies for a special use, an application shall (1) be filed with the Zoning Administrator who refers it to the Planning Commission for a hearing, (2) be in such form and contain such information as shall be prescribed from time to time by the Commission, and (3) in all instances contain the following information:
  1. The applicant's name, address and telephone number;
  2. The precise wording of any proposed amendment to the text of these regulations or the exact description of the special use requested.
  3. In the event that the proposed amendment would change the zoning district classification or add a special use to any specific property:
    - a. The name, address and telephone number of the owner of the property and, if any, the agent representing the owner;
    - b. The legal description of the property and a general description such as a street address sufficient to identify the property;
    - c. The present and proposed zoning district classifications and existing uses of the property and structures thereon;
    - d. The dimensions of the property and the zoning lot area stated in square feet or acres or fractions thereof; and

- e. For land inside the city limits, an ownership list of the names, addresses and zip codes of the owners of record of real property located within 200 feet of the exterior boundary of the area described in the application both within the city limits and extending outside the city limits when necessary.
- f. If such area is located adjacent to but within the city limits, the ownership list, in addition to the 200 feet inside the city limits, shall provide similar information extending to 1,000 feet into the unincorporated area. If such area is located outside the city limits, the ownership list shall extend for 1,000 feet in the unincorporated area and, if the latter extends into the city limits, then such owners for 200 feet inside the city must also be included on the list.

C. Public Hearing. The Planning Commission shall hold a public hearing on each proposed amendment that is filed with, referred to, or initiated by the Commission. The Commission shall select a reasonable time and place for such public hearing, and it shall hold such hearing within 45 days from the date on which the proposed amendment is received or initiated. An applicant for an amendment may waive the requirement that such hearing be held within 45 days.

D. Notice of Hearing. One of the following three procedures shall be selected to provide proper notice for a public hearing for any zoning amendment application:

1. Public notice of a hearing by the Planning Commission on a proposed amendment shall be published once in the official newspaper by the Zoning Administrator. At least **20 days shall elapse** between the date of such publication and the date set for such hearing. Such notice shall state the date, time and place of the hearing and shall contain a statement regarding the proposed changes in regulations or the zoning classification or zoning district boundaries of any property. If the proposed amendment would change the zoning classification of any specific property or the boundaries of any zoning district, such notice shall contain the legal description or a general description sufficient to identify the property under consideration. If a general description is used, the notice shall include a statement that a complete legal description is available for public inspection and where such description is available.

In addition to such publication notice, the Zoning Administrator shall mail a written notice of the hearing containing information similar to the published notice thereof to the applicant and to the owners of record of all real property within the area to be altered or changed and to all owners of record of real property located within 200 feet of the exterior boundary of the area described in the amendment application both within the city limits and extending outside the city limits when necessary. If such area is located adjacent to but within the city limits, the area of notification shall, in addition to the 200 feet inside the city limits, be extended to 1,000 feet in the unincorporated area. If such area is located outside the city limits, the area of notification shall extend for 1,000 feet and, if such notification extends into the city limits, then 200 feet inside the city limits must also be included. The notice to adjacent property owners including the applicant shall be mailed so that **20 days shall elapse** between the mailing date and the hearing date. When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the Commission or the Governing Body.

2. Whenever five or more owners of record of real property owning 10 or more contiguous or noncontiguous lots, tracts or parcels of the same zoning classification initiate a rezoning of their property from a less restrictive to a more restrictive zoning classification, such amendment shall require notice by publication only and hearing in like manner as required by Section 11-100C. Such zoning amendment **shall not** require written notice and **shall not** be subject to the protest petition provision of Section 11-103.
3. Whenever the Governing Body or the Planning Commission initiates a rezoning from a less restrictive to a more restrictive zoning classification of 10 or more contiguous or noncontiguous lots, tracts or parcels of the same zoning classification having five or more owners of record of real property, such amendment shall require notice by publication and hearing in like manner as that required by Section 11-100C. In addition, written notice **shall be** required to be mailed to **only** owners of record of real properties to be rezoned and **only** such owners shall be eligible to initiate a protest petition under Section 11-103.

The Commission may give additional notice to other persons as it may from time to time provide by its rules. Such rules may include requirements for additional notice to be provided for by the posting of signs on the property to be considered in the amendment application.

E. Conduct of Hearing.

1. All hearings that these regulations require the Planning Commission to conduct for amendments to changes or revisions in the regulations or the zoning classifications or in district boundaries shall be open public meetings according to K.S.A. 75-4317 et seq., the Open Meetings Act. Legislative hearings are required by the Commission's Bylaws for changes or revisions in the regulations of the Zoning Regulations. When a proposed amendment will affect the zoning classification or district boundary of specific property; however, the Commission acts in a quasi-judicial capacity for the hearing and may upon proper motion proceed to deliberate in closed session according to K.S.A. 75-4318(a). No binding action can be taken in such a session and all voting must be conducted in an open meeting.
2. Any interested person or party may appear and be heard at the hearing in person, by agent or by attorney.
3. The hearing shall be conducted and a record of the proceedings shall be preserved in such a manner and according to such procedures as the Commission may from time to time prescribe by rule or bylaws which are not in conflict with these regulations or applicable state statutes.
4. The Commission shall keep minutes of the proceedings showing evidence presented at hearings, findings of fact by the Commission, motions made and the vote of each member upon any question or recommendation. If a member is absent, abstains or disqualified, such fact shall be indicated.
5. The Commission may request a report on any proposed amendment from any governmental official or agency, or any other person, firm or corporation. If such a report is made, a copy thereof shall be made available to the applicant and any other interested person prior to or at the public hearing.
6. The Commission may make recommendations on proposed amendments to specific properties which affect only a portion of the land described in the hearing notice or which give all or any part of the land described a zoning classification of lesser change than that set forth in the notice. A recommendation for a zoning classification of lesser change than that set forth in the notice shall not be valid, however, without republication and, where necessary, re-mailing of notices, unless the Commission shall have previously established a table or publication available to the public which designates what zoning classifications are lesser changes authorized within the published zoning classifications. (See Appendix page A-1 for Table of Comparability for Zoning Districts.)

7. For action on zoning amendments, a quorum of the Commission must be more than one-half of the membership as established by ordinance. A majority vote of the members of the Commission present at the hearing shall be required to recommend approval or disapproval of the amendment to the Governing Body. If the Commission fails to make a recommendation on a rezoning request, the Commission shall be deemed to have made a recommendation of disapproval.
8. A hearing may be adjourned from time to time upon a motion to continue in the future at some stated date, time and place. At the conclusion of a hearing, the Commission shall prepare its findings and the factors on which to base its recommendation and vote.
9. If a meeting is called or a hearing is on the agenda and no quorum is present, the members in attendance may agree to hold the hearing at another meeting in the future at a stated date, time and place or at the next regular meeting for which, when announced at the present scheduled meeting, no further public notice need be given to continue the hearing.

F. Report by Planning Commission. Within 14 days after the close of the public portion of the hearing and voting on a proposed amendment or special use, the Planning Commission shall submit a report to the Governing Body. A copy of this report shall also be filed with the Clerk and the Zoning Administrator and such copies shall be kept available for public inspection. A copy of the report shall also be mailed to the applicant. Such report shall contain a recommendation as to whether the proposed amendment or special use should be approved or disapproved and specific written determinations on the items listed in Sections 11-100G or 11-100H and on such other items as the Commission may consider relevant. The report submitted to the Governing Body shall be accompanied by a summary of the hearing as required by K.S.A. 12-756(b). In lieu of a report, the above information may be contained in the minutes of the meeting and submitted to the Governing Body.

G. Amendments to Text. When a proposed amendment by the Governing Body or Planning Commission would result in a change or revision in the text of these regulations, but would not result in a change of zoning classification of any specific property, a legislative hearing shall be held by the Commission and the report or minutes shall contain a statement as to the nature and effect of such proposed amendment.

H. Review Criteria for Amendments or Special Uses. When a proposed rezoning amendment or special use would result in a zoning change for any specific property, the report of the Planning Commission accompanied by a summary of the hearing shall contain statements as to (1) the present and proposed district classifications or description of the special use, (2) the applicant's reasons for requesting such reclassification or special use, and (3) a statement of the factors where relevant upon which the recommendation of the Commission is based using the following criteria as guidelines: \*

1. What is the character of the subject property and the surrounding neighborhood in relation to existing uses and their condition?
2. What is the current zoning of the subject property and that of the surrounding neighborhood in relation to the request?
3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration?
4. Would the request correct an error in the application of these regulations?
5. Is the request caused by changed or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changed or changing conditions?
6. Do adequate sewage disposal and water supply and all other necessary public facilities including street access exist or can they be provided to serve the uses that would be permitted on the subject property?
7. Would the subject property need to be platted or replatted or in lieu of dedications made for rights-of-way, easements, and access control or building setback lines?
8. Would a screening plan be necessary for existing and/or potential uses of the subject property?
9. Is suitable vacant land or buildings available or not available for development that currently has the same zoning as is requested?
10. If the request is for business or industrial uses, are such uses needed to provide more services or employment opportunities?
11. Is the subject property suitable for the uses in the current zoning to which it has been restricted?

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\* NOTE: All the factors stated in the decision of Golden v. City of Overland Park, 224 Kan. 591, 584 P.2d 130 (1978) are included in this list. In using these factors as guidelines, modifications may be made in the criteria to more specifically relate them to the particular zoning change in classification or special use.

12. To what extent would the removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?
13. Would the request be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?
14. Is the request in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?
15. What is the nature of the support or opposition to the request?
16. Is there any information or are there recommendations on this request available from professional persons or persons with related expertise which would be helpful in its evaluation?
17. By comparison, does the relative gain to the public health, safety or general welfare outweigh the loss in property value or the hardship imposed upon the applicant by not approving the request?

Of those factors considered as relevant to the requested change in zoning district classification or boundary or special use, not all factors need to be given equal consideration by the Commission in deciding upon its recommendation.

**101 Special Uses.** Because of particular factors associated with their activities, certain uses which might have an adverse effect upon nearby properties or upon the character and future development of a district are not permitted outright in districts, but are allowed as "special uses" when their proposed location is supplemented by additional conditions such as to make the use considered compatible with the surrounding property, the neighborhood and the zoning district.

In granting a special use, the minimum requirements of approval for all similar types of permitted uses in the same district must be met, unless otherwise reduced by a specific reference in these regulations. The requirements may be made more stringent if there is a potentially injurious effect which may be anticipated upon other property and the neighborhood or contrary to the welfare and convenience of the public. Such additional conditions may include, but are not limited to, requirements affecting the lot size or yard dimensions; changing street width; the extent and location of entrance or exit drives; controlling the size, location and number of signs; the period and time of operation; lot coverage and height of buildings; screening, fencing and/or landscaping to protect the surrounding property; establishing environmental standards for air and water pollution, noise, vibration, lighting and other such conditions; protection from flooding; and additional improvements such as street construction, sidewalks, utilities and storm drainage, if necessary, including platting and/or dedications. Such conditions may be placed upon the property which is the subject of the special use application or upon the applicant or both.

Although the Official Zoning Map is not amended, the procedure for approval of a special use shall otherwise be the same as for an amendment to change a zoning district classification or boundary which is set forth in Section 11-100 of this Article including the provisions for filing protest petitions in Section 11-103; provided, that any conditions which are further imposed upon the special use shall be made a part of the effectuating ordinance. Applications for a special use shall be accompanied by a plot plan of the proposed development. Concurrent applications may be processed for changing zoning district classifications as amendments and approving special uses on the same property wherein joint notices are advertised and mailed and hearing held; however, separate motions, review criteria and effectuating ordinances are necessary.

Failure to comply with any of the conditions for a special use which are later attached to a zoning permit shall constitute a violation of these regulations. Upon a finding by the Zoning Administrator of such a violation, the zoning permit may be declared null and void. If an applicant desires to make a change in a condition at a later date it is necessary to apply for a rehearing and a decision be made in the same manner as the original special use; however, only the requested condition is to be reconsidered at the hearing.

No special use approval by the Governing Body shall be valid for a period longer than one year from the publication date of the effectuating ordinance unless (1) another time period is designated as a condition attached to the special use; (2) an application is filed and a zoning permit is approved during the period of validity. In such instance the special use shall be valid for the period of validity of the zoning permit. The Governing Body may authorize extensions of the validity period without notice or public hearing for more than one year upon a written request received within a valid period. Upon expiration of any validity period, the effectuating ordinance automatically becomes null and void unless an extension has been granted or a zoning permit has been obtained.

102 **Project Review.** In the event that certain public improvements, facilities or utilities of a type embraced within the recommendations of the Comprehensive Plan are classified as special uses or are the subject of a change in zoning district classification or boundary, the consideration of such uses by the Planning Commission in conjunction with a zoning application may also constitute their project review of such proposed use if concurrently processed under procedures required by K.S.A. 12-748, as amended; provided, that a statement of findings is included in the Commission's approval or disapproval as to whether such proposed use is or is not in conformance with the Comprehensive Plan. In case the Commission finds that the proposed use is not in conformance to the Plan and states in writing the manner in which it is not in conformance, then the Governing Body shall not proceed with construction of such a proposed use unless the Governing Body by a majority vote overrides the disapproval of the Commission and the Plan shall be deemed to have been amended and the Commission shall make the necessary changes in the Plan to reflect the vote of the Governing Body.

103 **Filing of Protest.** Whether or not the Planning Commission approves or disapproves a zoning change, if a written protest against a proposed amendment for a specific property or a special use shall be filed in the office of the Clerk within 14 days after the date of the conclusion of the hearing by the Commission which is signed and acknowledged and an accurate legal description of their property provided by the owners of record of 20% or more of any real property proposed to be altered or changed, excluding streets or public ways, or by the owners of record of 20% or more of the real property within the total area required in the official area of notification by Section 11-100D, excluding streets and public ways and specific statutorily excluded property as described below, then the effectuating ordinance shall not be passed except by at least a 3/4 vote of all the members of the Governing Body. (See Sections 11-100D2 and D3 for protest petition exceptions for rezoning from a lesser restrictive to a more restrictive zoning classification.)

Property statutorily excluded by K.S.A. 12-757(f) from determining the sufficiency of a protest petition when calculating the total real property within the notification area is that which was (1) requested by the owner of the specific property for rezoning or a special use; or (2) the owner of the specific property requested for rezoning or a special use who does not oppose in writing such rezoning or special use. (See Sections 11-100 D2 and D3 for protest petition exceptions for rezoning from a lesser restrictive to a more restrictive zoning classification.)

104 **Adoption of Amendments or Special Uses by the Governing Body.** When the Planning Commission in its report submits a recommendation of approval or disapproval of a proposed amendment or special use including the basis therefore, the Governing Body may: (1) Adopt such recommendation by an effectuating ordinance; (2) override the Commission's recommendation by a 2/3 majority vote of the membership of the Governing Body; or (3) return such recommendation to the Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove. If the Governing Body returns the Commission's recommendation, the Commission, after considering the same, may resubmit its original recommendation giving the reasons therefore or submit a new or amended recommendation. Upon the receipt of such recommendation, the Governing Body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendation by the effectuating ordinance or it need take no further action thereon. If the Commission fails to deliver its recommendation to the Governing Body following the Commission's next regular meeting after receipt of the Governing Body's report, the Governing Body shall consider such course of inaction on the part of the Commission as a resubmission of the original recommendation and proceed accordingly.

In considering its decision under each of the above set of circumstances, the Governing Body shall take into account the guidelines in Section 11-100H which are relevant to the proposed amendment or special use and, having reviewed the Commission's findings of fact and the factors upon which their recommendation is based, the Governing Body either adopts the Commission's findings and factors by reference or records their own findings of fact and the factors upon which their decision is based.

The proposed amendment or special use shall become effective upon publication of their respective adopting ordinance. If such an amendment affects the classification or boundaries of any zoning district, the respective ordinance shall legally describe the classification or boundaries as amended, shall order the Official Zoning Map to be changed to reflect such amendment, and shall reincorporate such map as amended.

105 **Annual Review.** In order to maintain these regulations including the Official Zoning Map(s), the Planning Commission shall annually hold a public review at their first regular meeting in February to consider amendments, if any, to these regulations. Preceding such a review, the Governing Body and other affected governmental agencies and interested parties should be notified of the intent to review and their ideas requested. In preparation for such a review, the Zoning Administrator shall maintain a master copy of the current zoning regulations on which are recorded comments and ideas brought to the attention of the Administrator during the preceding year in order to maintain the intent and purpose of these regulations under changing conditions and to implement the Comprehensive Plan. Information on any relevant changes in state statutes shall be compiled for the review.

106 **Judicial Review.** As provided by K.S.A. 12-760, as amended, any ordinance, regulation, amendment, special use or other zoning decision provided for or authorized by these regulations shall be reasonable and any person aggrieved thereby may have the reasonableness of any decision determined by bringing an action against the City within 30 days after a final decision is made by the City. In the event that an amendment to these regulations or a special use is approved by the Governing Body, the 30-day period commences when the effectuating ordinance is published. Such action shall be brought in the County District Court.

According to K.S.A. 12-757(a), if a proposed amendment is not a general revision of the existing regulations and affects specific property, such an amendment shall be presumed to be reasonable if it is in accordance with the land use plan or the land use element of the comprehensive plan.