

## ARTICLE 5

### AMENDMENTS TO DEVELOPMENT ORDINANCE AND ZONING MAP

#### 5.1 General

The Lowell *City Council* may amend, supplement, modify, or repeal any provision of this ordinance or amend the zoning maps according to the procedure established by G.S.160D-601 through G.S. 160D-605. Such amendments shall be evaluated for compliance with the “City of Lowell Comprehensive Land Use Plan”, adopted April 13, 2021 including subsequent amendments adopted by the City Council of the City of Lowell and other applicable adopted plans, and may require a land use plan and/or comprehensive master plan amendment to ensure compatibility between the plan(s) and the amendment. Amendments and modifications shall be acted upon by the *City Council*, after recommendation from the *Planning Board*.

#### 5.2 Initiation of Amendments

Proposed changes or amendments to either the text of this Ordinance or the Official Zoning Map may be initiated by the Lowell *City Council*, the Lowell *Planning Board*, the Lowell *Planning, Zoning & Subdivision Administrator*, any owner of a legal or equitable interest in land located in the City’s jurisdiction, or any resident of the City’s jurisdiction having a legal or equitable interest in land affected by the proposed amendment. Persons other than the City of Lowell, the landowner, or the landowner’s authorized agent making application for a zoning map amendment shall certify to the City that the owner of the parcel of land as shown on the Gaston County tax listing has received actual notice of the proposed amendment and a copy of the notice of the legislative hearing in accordance with the provisions of G.S. 160D-602(d). See Section 5.3-1(D) of this Article for content of an application for amendment(s).

No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor shall it be enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the City.

## 5.3 Amendment Process

### 5.3-1 Initial Application Process.

- (A.) Pre-filing meeting. Before filing an application for an amendment an applicant shall meet with the *Planning, Zoning & Subdivision Administrator* to discuss the proposed amendment and to become more familiar with the applicable requirements and approval procedures.
- (B.) Neighborhood meeting. It is required that the applicant for a zoning map amendment (rezoning) meet with representatives and/or landowners of the neighborhood in which the property for which the proposed map amendment (rezoning) is located as authorized by G.S. 160D-602(e). The applicant shall coordinate the time and date of the meeting to enable the *Planning, Zoning & Subdivision Administrator* to attend and address procedural questions that arise. The neighborhood meeting shall be conducted prior to the date of the legislative hearing at which comments on the application will be heard. This meeting may be held either before or after, but not on, the date of the meeting at which the Planning Board review and recommendation is scheduled.
- (C.) Filing.
- (1.) An application requesting an amendment shall be filed with the *Planning, Zoning & Subdivision Administrator*.
  - (2.) Applicable fees shall be payable as set forth by the *Lowell City Council*.
  - (3.) Completed applications submitted by 12:00 noon on the 15th day of the any calendar month will be considered at the meeting of the *Lowell Planning Board* scheduled for the following month.
- (D.) Content and valid authorization of applications.
- (1.) Each application shall contain or be accompanied by all information required on the application form provided by the *Planning, Zoning & Subdivision Administrator*.
  - (2.) Every amendment proposing to change the district boundary lines shall be accompanied by metes and bounds description, a survey of the area involved, or reference to existing lots, sufficient in the estimation of the *Planning, Zoning & Subdivision Administrator* to plot or otherwise identify the amendment on the Official Zoning Map of the City of Lowell.
  - (3.) Any person designated by the owner(s) of the property included in the petition to serve as agent for the owner shall submit such authorization in writing with the application. See Section 5.2 of this Article.

(4.) Applications for Conditional Zoning of property within the jurisdiction of the City of Lowell shall follow the procedures appearing in Section 5.4 of this Ordinance.

5.3-2 Review by the Lowell Planning Board.

General. Upon submission of a request for amendment of the Lowell Development Ordinance or an Official Zoning Map amendment, the request shall be scheduled *for review* by the Lowell Planning Board in a public meeting in accordance with Section 5.3-1(C)(3) of this Article.

(A.) Review – General. The *Planning Board* shall make recommendations to the Lowell *City Council* regarding whether to approve or deny each proposed amendment. When considering an amendment, the *Planning Board* shall consider both the consistency and reasonableness of the amendment with the “City of Lowell Comprehensive Land Use Plan”, adopted April 13, 2021 including subsequent amendments adopted by the City Council of the City of Lowell and other applicable adopted plans for the area affected by the proposed amendment.

(B.) Recommendation by the Lowell *Planning Board*. Following a recommendation by the Lowell *Planning Board* on the proposed amendment(s), the action shall be reported to the Lowell *City Council* for a legislative hearing and final action according to the process set forth in Section 5.3-3 of this Ordinance. The legislative hearing will be scheduled as provided by the rules of procedure of the City Council for calling legislative hearings.

(C.) Continuance by the Lowell *Planning Board*. In those cases where, upon hearing the request, the *Planning Board* feels that more information is needed, questions have arisen, or other circumstances occur in which additional time is needed to enable the Board to make a decision, the *Planning Board* may continue their meeting for up to eight (8) days. The Board shall direct the appropriate person(s) to obtain the needed information, provide answers to questions, and/or conduct other investigations during this time to enable the Board to decide at the reconvening of the continued meeting. The *Planning Board* shall act upon either an affirmative or negative recommendation on continued items at the continued meeting.

(D.) Content of recommendation and statement of consistency. Any recommendation made by the Lowell *Planning Board* to the Lowell *City Council* pursuant to this section shall be in writing. In addition, the Lowell *Planning Board* shall approve a statement in accordance with G.S. 160D-605(a) describing whether or not the proposed amendment is consistent with the “City of Lowell Comprehensive Land Use Plan”, adopted April 13, 2021 including subsequent amendments adopted by the City Council of the City of Lowell and other applicable adopted plans.

(E.) Conflict of Interest. A member of the *Planning Board* shall not participate in or vote on any matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. A member shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable impact on the member. A member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship with an affected person. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. (G.S. 160D-109).

5.3-3 Review by the Lowell City Council.

(A.) Review and Legislative Hearing. Before adopting, amending, or repealing any ordinance authorized by this Article, the City Council shall hold a legislative hearing on it. Following receipt of either a recommendation, or receipt of the petitioner's request for an amendment, the *Lowell City Council* shall hold a legislative hearing on the proposed amendment to obtain public comment(s). The legislative hearing shall be scheduled and conducted as provided by the City Council' rules of procedure.

(B.) Notification. The *City Clerk* or authorized designee shall prepare a public notice for the legislative hearing as required below: (G.S. 160D-601 and G.S. 160D-602).

(1.) Method of procedure for publishing notice of all amendments per G.S. 160D-601.

A notice of the legislative hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(2.) Method of procedure for mailed notice of Zoning Map Amendments per G.S. 160D-602.

(a) In addition to the publication requirements for notices of legislative hearings required in Section 5.3-3(B)(1), the procedures adopted pursuant to this section provide that whenever there is a zoning map amendment the owner of that parcel of land as shown on the county tax listing and the owners of all parcels of land abutting that parcel of land including those separated by a street, railroad, or other transportation corridor as shown on the county tax listing shall be mailed a notice of a legislative hearing on the proposed

amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the legislative hearing. Except for a City-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the City Council that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of legislative hearing. The person or persons required to provide notice shall certify to the City Council that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first-class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the City elects to use the expanded published notice provided for in this subsection. In this instance, a City may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearing as required by G.S. 160D-601, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

(c) When a zoning map amendment is proposed, the City shall prominently post a notice of the legislative hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way during the same time period as stated in Sub-section 5.3-3(B)(2)(a). When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the City shall post sufficient notices to provide reasonable notice to interested persons.

(C.) Upon receipt of the recommendations from the Planning Board, the City Council shall hold a legislative hearing on the application for an amendment. Notice of the legislative hearing shall be provided in accordance with the provisions for legislative hearings for amendments as set forth in section 5.3-3(B) of this Ordinance and the North Carolina General Statutes. (ref. G.S. 160D-601 through G.S. 160D-603)

(D.) Action.

- (1.) Before acting on any proposed amendment, the *Lowell City Council* shall consider any recommendation made by the *Lowell Planning Board*, the recommendation submitted by the *Planning, Zoning & Subdivision Administrator* to the *Planning Board*, the comments made at the legislative hearing, and may consider any other relevant additional information available.
- (2.) When considering a proposed amendment, the *Lowell City Council* shall not evaluate the petition based on any specific proposal for the use or development of the property unless explicitly required by this Ordinance. The petitioner shall not use any graphic materials or descriptions of the proposed development except for those that would apply to all uses permitted by the requested classification including applications for an overlay district Zoning Map Amendment (TNDO & HIO) where the use is highly pertinent to the facts during consideration of the amendment and/or where a development agreement is to be made a part of the project.
- (3.) Upon reviewing all pertinent information, the *Lowell City Council* may take whatever action it may deem appropriate, including tabling the application for the purpose of additional neighborhood meeting(s) as required by Section 5.3-1(B) of this Article.

(E.) Statements of Consistency and Reasonableness. Prior to adopting or rejecting any amendment, the *City Council* shall approve a statement in accordance with G.S. 160D-605(a) describing whether or not the proposed amendment is consistent with the “City of Lowell Comprehensive Land Use Plan”, adopted April 13, 2021 including subsequent amendments adopted by the City Council of the City of Lowell and other applicable adopted plans. When either adopting or rejecting a zoning map amendment the *Lowell City Council* shall approve a statement analyzing the reasonableness of the proposed amendment in accordance with G.S. 160D-605(b). The statement of reasonableness may consider, among other factors:

- (1.) The size, physical conditions, and other attributes of the area proposed to be rezoned;
- (2.) The benefits and detriments to the landowners, the neighbors, and the surrounding community;
- (3.) The relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;
- (4.) Why the action taken is in the public interest; and
- (5.) Any changed conditions warranting the amendment.

Such statements may be combined into a single statement per G.S. 160D-605(c) and incorporated into ordinances amending either the text of an ordinance established

under the authority of G.S. 160D or, the Official Zoning Map established under the authority of G.S. 160D-105(a) reflecting the division of territorial jurisdiction established under authority of G.S. 160D-703.

(F.) Conflict of Interest. A *City Council* member shall not vote on any matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. A member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable impact on the member. A *City Council* member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship with an affected person. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. (G.S. 160D-109).

5.3-4 Waiting period for subsequent applications.

(A.) Waiting period - general. When an application for a zoning map amendment has been approved or denied by the Lowell *City Council*, no application including the same property shall be accepted or considered within four (4) months after the date of the approval or denial. This restriction shall apply regardless of whether or not the new application is for a zoning classification different from the original application.

(B.) Waiting period - waiver. The waiting period required by this section may be waived by a three-fourths vote of Lowell *City Council* if it determines that there have been substantial changes in conditions or circumstances which may relate to the request. A request for a waiver of the waiting period shall be submitted to the *Planning, Zoning & Subdivision Administrator*, who shall review and prepare a recommendation regarding action on the request. Said recommendation shall be considered by the *City Council* in their review of the request for a waiver. If the request for the waiver is approved, the application shall go through the full review process as set forth above.

## 5.4 Conditional Zoning

### 5.4-1 Purpose.

Conditional zoning is established in accordance with G.S. 160D-703(b) to provide for flexibility in the development of property while ensuring that the development is compatible with neighboring uses. Conditional zoning affords a degree of certainty in land use decisions not possible when rezoning to a Primary General Use District. Additional standards and regulations, mutually agreed upon in writing by the City of Lowell and the petitioner, may be attached to a proposed development to ensure compatibility with the surrounding uses and with applicable adopted plans in accordance with the requirements of this section.

### 5.4-2 Conditional zoning districts.

Conditional zoning is available for any of the Primary General Use or Overlay District classifications enumerated in Article 8 of this Ordinance, except for those that require a site-specific development plan as part of the application (e.g., Traditional Neighborhood Development (TNDO) Overlay District, Heavy Industry (HIO) Overlay District). The conditional zoning designation shall be indicated on all zoning maps and other official documents with the suffix, "(CZ)" and enumerated to reference the ordinance on record of the approval (e.g. "MU-1(CZ-2020-01), Ord. #2020-99").

### 5.4-3 General requirements.

The following provisions shall apply in the administration of conditional zoning:

(A) A conditional zoning application shall be considered only upon request of the owner of the affected property or a duly authorized representative of the property owner demonstrated by written, signed and notarized documentation.

(B) Applicant shall meet with representatives of the surrounding property owners and of the surrounding neighborhood(s) to discuss the proposed development, and include a report of any such meetings in accordance with Section 5.3-1(B) of this Article to the *Planning, Zoning & Subdivision Administrator*.

(C) All standards and requirements of the corresponding Primary General Use District shall be met, except to the extent that the conditions imposed by the conditional zoning are more restrictive than the general use standards.

(D) No uses shall be permitted except those enumerated in the ordinance adopting the conditional zoning.



(E) The conditions agreed upon pursuant to the Conditional Zoning approval shall be stated in the adopting ordinance and may limit the uses which are permitted on the property. By way of illustration and not limitation, conditions may specify location on the property of the proposed structure(s), the number of dwelling units, the location and extent of supporting facilities such as parking lots, driveways, and access streets, the location and extent of buffer areas and other special purpose areas, the timing of development, the height of structures, the location and extent of rights-of-way and other areas to be dedicated for public purposes, and other such matters as may be identified as appropriate for the proposed development.

(F) Minor modifications to the approved Conditional Zoning ordinance may be approved by the *Planning, Zoning & Subdivision Administrator* per authorization under G.S. 160D-703(b). The minor modifications authorized herein are intended to provide relief where conditions established by the Conditional Zoning ordinance create a hardship based upon a unique physical attribute of the property itself or some other factor unique to the property which was not known at the time of ordinance adoption and which has subsequently rendered the property difficult or impossible to use due to the condition(s) imposed by the zoning. The permit holder shall bear the burden of proof to secure the modification(s). Such modifications shall be limited to the following:

1. A deviation of up to ten percent or 24 inches, whichever is greater, from the approved setback, provided that the conditions for approving a deviation from the required setback established by Article 14 (Flexible Development Standards) of this Ordinance are met.
2. A reduction of up to 25 percent in the number of parking spaces required for the use provided that the proposed development is located within ½ mile of either the Main Street District (MS) or the Mixed Use (MU-1 and MU-2) and on-street parking is available.
3. Any other minor modification in accordance with the limitations and procedures prescribed in this Ordinance, unless restricted by G.S. 160D-703(b), or the Conditional Zoning ordinance adopted pursuant to this section specifies otherwise.

Any other modifications must be approved by the City Council as an amendment to the Conditional Zoning ordinance, and may be referred to the Planning Board or *Planning, Zoning & Subdivision Administrator* as appropriate. The *Planning, Zoning & Subdivision Administrator* shall in every case have the discretion to decline to exercise the power to approve or deny modifications as provided for herein, and may require the applicant to seek an amendment to the Conditional Zoning ordinance.

(G) Any violation of a provision of a Conditional Zoning ordinance shall be treated the same as any other violation of this Ordinance and shall be subject to the same remedies and penalties as any other such violation.

(H) If for any reason any provision of a Conditional Zoning ordinance is found to be illegal or invalid, or if the applicant should fail to accept any condition, the entire Conditional Zoning ordinance shall be null and void, and the property shall revert to its previous zoning classification without further action by the City Council.

(I) If no formal action (e.g. construction plan submittal, permit application, etc.) has been taken to begin the development of the property in accordance with the Conditional Zoning ordinance within 24 months of its approval by City Council, or no vested right has been obtained, then the property shall revert to its previous zoning classification, or the *Planning, Zoning & Subdivision Administrator* may initiate appropriate action to rezone the affected property to any other classification deemed consistent with “City of Lowell Comprehensive Land Use Plan”, adopted April 13, 2021 including subsequent amendments adopted by the City Council of the City of Lowell and other applicable adopted plans.

(J) If the use or uses commenced pursuant to a Conditional Zoning ordinance adopted pursuant to this section are abandoned or discontinued or no vested right has been obtained then the property shall revert to its previous zoning classification, or the *Planning, Zoning & Subdivision Administrator* may initiate appropriate action to rezone the affected property to any other classification deemed consistent with “City of Lowell Comprehensive Land Use Plan”, adopted April 13, 2021 including subsequent amendments adopted by the City Council of the City of Lowell and other applicable adopted plans.

(K) No variances or special use permits may be issued for developments on property that is subject to a Conditional Zoning ordinance.

#### 5.4-4 Application procedure.

When applying for Conditional Zoning, the application shall specify the nature of the proposed development and shall propose conditions to ensure compatibility with the surrounding uses and consistency with adopted plans. Applications for Conditional Zoning shall be processed, considered, and voted upon in accordance with procedures established in Section 5.3 of this Article for zoning map and zoning text amendments, except as provided below:

(A) The application shall include site plans, landscape plans, building elevations, floor plans, and such other information required to provide the approving bodies with a complete and accurate description of the proposed development.

(B) The application and supporting materials shall be reviewed by the *Planning, Zoning & Subdivision Administrator* in accordance with Section 7.8 of this Ordinance prior to the meeting of the Planning Board at which the application is to be considered. The recommendations and comments of the *Planning, Zoning & Subdivision Administrator* shall be reported to the Planning Board. In addition, the *Lowell Planning, Zoning & Subdivision Administrator* shall evaluate Conditional Zoning applications on the basis of the criteria for special use permits set out in Article 7, and shall submit said report at the legislative hearings on said applications.

(C) Following review by the *Planning, Zoning & Subdivision Administrator*, the Planning Board shall review the application and all requisite documents at a regularly scheduled meeting following the procedures defined in Sub-section 5.3-2 of this Article. The Planning Board may recommend approval of the application, including recommending conditions for the zoning; recommend denial of the application; or continue the consideration of the application in order to receive further information regarding the application as authorized by Sub-section 5.3-2(C) of this Article.

(D) Upon receipt of the recommendations from the Planning Board, the City Council shall hold a legislative hearing on the application for Conditional Zoning. Notice of the legislative hearing shall be provided in accordance with the provisions for legislative hearings for zoning map amendments as set forth in Section 5.3-3(B) of this Ordinance and G.S. 160D-601 and G.S.160D-602.

(E) The City Council' consideration of an application for Conditional Zoning is legislative in nature, and the City Council may consider any relevant information in its deliberations, including the criteria for issuing special use permits specified in Article 7. Consideration shall be given to adopted land use plans for the area, small area plans, corridor plans, and other land use policy documents, and to surrounding land uses. The City Council may adopt or not adopt a Conditional Zoning ordinance in accordance with the procedures defined in Sub-section 5.3-3 of this Article, or may continue its consideration of the application as necessary to conclude consideration and deliberations.

(F) During the adoption of a Conditional Zoning ordinance, specific conditions may be proposed by the petitioner, City Council, Planning Board, or City staff, but only those conditions mutually approved by City Council and the petitioner in writing may be incorporated into the zoning regulations and permit requirements. Conditions and site-specific standards imposed in a conditional zoning district shall be limited to those that address the conformance of the development and use of the site to City ordinances, an officially adopted land use, comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

(G) Specific findings of the City Council are not required for action on an application for Conditional Zoning. However, a statement analyzing the reasonableness of the proposed rezoning shall be prepared for each conditional zoning district as required by Sub-section 5.3-3(E) of this Article.

(H) Upon adoption of a Conditional Zoning ordinance, the Official Zoning Map of the City of Lowell shall be amended to add the conditional zoning district and denote the reference as required by Sub-section 5.4-2 of this Article. The *Planning, Zoning & Subdivision Administrator* shall maintain a book or file for Conditional Zoning ordinances, and each Conditional Zoning ordinance shall be filed therein. Failure to comply with this provision shall not render the ordinance invalid.

(I) The Conditional Zoning ordinance adopted as provided herein shall be perpetually binding upon the affected property unless subsequently changed or amended as provided for in this Ordinance.

(J) Conditional Zoning ordinances are legislative in nature, and judicial review of Conditional Zoning ordinances shall be as provided by Article 14 of Chapter 160D of the North Carolina General Statutes.