



Rezoning Application Procedures and Instructions

(Includes PUDs and Major Amendments to PUDs)

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STEP 1: PRE-APPLICATION MEETING

Prior to filing an application, the applicant is requested to schedule a pre-application meeting with Planning staff. The meeting is intended for the exchange of information by which the owner can explain the general development concept and site conditions, and Planning staff can explain the requirements of the zoning regulations, constraints applicable to the proposal, and Comprehensive Plan policies.

A pre-application meeting should be held no later than one (1) week prior to the application deadline. Applications without a qualified pre-application meeting will be processed as staff resources allow and cannot be guaranteed for the next scheduled agenda of the Planning Commission.

At the time of the pre-application meeting, staff will fill out and sign the **Rezoning Application Checklist** which should be turned in with the application. At the pre-application meeting, staff will review the citizen participation process requirements with the applicant, including sending notices to affected property owners and holding a neighborhood information meeting. Staff will hand out specific guidelines for this procedure at this meeting. The applicant should submit the date, time, and place of the meeting at the same time as the application.

In lieu of a pre-application meeting, the applicant may submit a **Zoning Inquiry** form at least two weeks prior to the application deadline. Staff will send a written response to the applicant within a week indicating issues, level of support, and direction for proceeding with an official application.

STEP 2: FILING AN APPLICATION

All elements of the application shall be filed together at one time before 12:00 noon on the filing deadline day at the Planning Department office (see attached Schedule of Processing). Upon a finding that an application is incomplete or otherwise not in compliance with code requirements, further processing shall be at the discretion of the Planning Director. Elements of this application packet are more fully described as follows:

1. **Application Form**

Each item must be completely answered, with the original signature of the owner(s) of record and authorized agent(s), if any, or the application will be considered incomplete and not processed for public hearing. The authority to determine the completeness of an application rests with the Planning Director.

- a. **Legal Description** – Staff relies on this legal description to prepare property owner notices, legal notices, advertisements, and ordinances. If an error is found in the submitted legal description after application, it may invalidate the process and cause substantial delay.
- b. **Ownership** - The application shall be endorsed by the owner(s) of record. Owner(s) of record shall mean the owner(s) as contained on the last deed of record filed with the Shawnee

County Register of Deeds or, submission of a recorded Certificate of Power of Attorney, duly notarized, and containing the legal description of the subject property.

2. Property Owner Notification

Kansas State Law requires a published notice of the application in the official city newspaper as well as mailed notices to surrounding property owners at least 20 days prior to the Planning Commission public hearing. The Planning Department is responsible for all publishing and mailing of notices. A portion of the filing fee covers this cost. **The applicant is responsible for presenting the correct legal description of the subject property** to the Planning Department at time of application, so that Staff can prepare a vicinity map of the official notification area. The notification area of adjacent property owners is as follows:

- When in the City of Topeka: 200 foot radius around subject property
- When in unincorporated Shawnee County: 1,000 foot radius around subject property

The above dimensional distances also represent the limits of the *legal protest area* as set forth by Kansas Statutes.

3. Filing fee

Applications for proposals must be accompanied by the appropriate filing fee (see Application Fee List). Checks should be made payable to the "City of Topeka".

4. Real Property Tax Status

All real property taxes including special assessments due are to be paid to date and current for the subject property or it will not be scheduled for public hearing until they are current.

STEP 3: STAFF REVIEW & COURTESY COMMENTS

Once a complete application has been submitted, Planning Staff will distribute it to other reviewing agencies for comments. If an application is deemed to be incomplete because of missing information, the case will likely be continued to the following month. The applicant will be notified within 2 weeks, if there are any incomplete items to be addressed. Planned Unit Development (PUD) rezoning applications will be afforded the opportunity to respond to courtesy comments midway through the staff review process. A typical review schedule looks like this:

Week 1 – Application assigned a case planner, distributed to review agencies for comment, and reviewed by staff.

Week 2 – Case planner completes research and sends courtesy comments (PUDs only) back to the applicant for Master PUD Plan needed revisions by the end of Week 2 or at the beginning of Week 3.

Week 3 – Notices to surrounding property owners are mailed from Planning Department no later than 20 days before public hearing.

Week 4 – Applicant submits revised Master PUD Plans typically by Monday of Week 4 to ensure those revisions will be included in the staff report and packet to the Planning Commission. Applicant submits Citizen Participation Report to Planning Department documenting results of neighborhood information meeting and citizen notices. Planning staff prepares recommendation on proposal.

Week 5 – Staff report recommendations are finalized and mailed to Planning Commission by Friday of this week or 10 days prior to the public hearing. The applicant will be sent a copy of the staff report at least 7 days of the public hearing.

Failure to adequately address a comment may result in a recommendation of disapproval, conditional approval, or continuance. Planning Staff will formulate a recommendation based upon planning

principles and adopted policies of the Comprehensive Plan. Two Kansas Supreme Court cases - *Golden v. City of Overland Park* and *Taco Bell v. City of Mission* – establish factors to be taken into consideration for rezonings in Kansas. Staff reports will reflect these factors.

STEP 4: PLANNING COMMISSION PUBLIC HEARING

The Topeka Planning Commission meets on the third Monday of each month in the City Council Chambers at 6:00 p.m. to consider rezoning applications (see Schedule of Processing). The Planning Commission holds the official **public hearing** at which time the public is able to offer testimony for or against the rezoning. After hearing from the public, the Planning Commission will then make a recommendation on the proposal which is forwarded to the Governing Body (City Council/Mayor).

A \$50.00 re-notification fee will be assessed to the applicant if an application scheduled for public hearing is requested for a **continuance**, unless the request is received by the Planning Department prior to publication of the legal notification and mailing of notices to property owners.

The Kansas Supreme Court has held that zoning matters are quasi-judicial proceedings subject to due process and fairness standards. Applicants are cautioned that personal contacts with members of Topeka Planning Commission with respect to your application could complicate the proceedings and result in delays. Planning Commissioners must declare their “ex-parte” contacts at the public hearing.

STEP 5: GOVERNING BODY DETERMINATION

Final determination of the application rests with the Governing Body, which is comprised of the Mayor and City Council. The Governing Body may approve the Planning Commission’s recommendation with a simple majority vote (minimum of 6 votes), overturn or amend it with a super-majority vote (minimum of 7 votes), or return the item to the Planning Commission for further consideration (minimum of 6 votes). If a valid **legal protest** is filed within 14 days after the Planning Commission’s public hearing by property owners making up 20% of the land area within the notification area, the rezoning application must be approved by a minimum of 8 votes.

City Council rules state that public hearings for planning items shall be conducted by the Planning Commission. An additional hearing will normally not be conducted by the Governing Body. Governing Body consideration usually can take place approximately 4 weeks after the Planning Commission’s public hearing. Please refer to the City’s web-site (topeka.org) for upcoming City Council agendas.

An item may be referred back to the Planning Commission by majority vote of the Governing Body with a written statement specifying the basis for its return, if: 1) a person alleges there was an unfair hearing by the Planning Commission, 2) new facts or evidence has been filed with the City Clerk by 5:00 p.m. on the Wednesday preceding the Governing Body meeting, or 3) the Governing Body determines that further deliberation is needed by the Planning Commission. Once the case is reviewed and recommended back by the Planning Commission to the Governing Body, the Governing Body may approve or disapprove with a simple majority vote (minimum of 6 votes). Those cases involving a **legal protest** by surrounding property owners must still be approved by a minimum of 8 votes.

Whenever the Governing Body has **denied** a rezoning, or whenever the Planning Commission has conducted a public hearing and made a recommendation on a requested rezoning and the request is subsequently withdrawn by the applicant prior to Governing Body consideration, a one (1) year re-filing

limitation from the date of the original application filing shall apply *unless* the Planning Commission grants an exception.

ADDITIONAL PROCEDURES AND INSTRUCTIONS FOR PUD REZONINGS ONLY

A Planned Unit Development (PUD) is a flexible and customized zoning district that allows for more creative design for development of the site. It frequently has multiple land uses, allows the development standards to be tailored to site conditions, and is intended to allow more efficient and economical use of the land. A full description of the PUD District can be found in Chapter 18.190 of Topeka Municipal Code (TMC).

A 24" x 36" PUD Master Plan is required to be submitted with a PUD Rezoning, which is a drawing of the subject property normally prepared by a development consultant, such as an engineer, architect, landscape architect, planner, or surveyor. This PUD Master Plan is submitted with the PUD Rezoning and is typically revised several times as it goes through the review process. If it is approved by the Governing Body, the PUD Master Plan is recorded by the applicant with the Shawnee County Register of Deeds and fifteen copies of the recorded Master Plan are returned to the Planning Department in order to complete the PUD Rezoning. The PUD Master Plan will typically incorporate the following elements unless waived by the Planning Director (see Section 18.190.050 of TMC):

1. The size and legal description of the site being rezoned.
2. The name of the PUD in large bold letters across the top of the drawing.
3. North arrow and scale of the drawing.
4. Streets, buildings, and land uses typically within 150 feet of the PUD's boundaries.
5. Physical characteristics of the site including: contour lines, floodplains, vegetative cover, water courses, and any historical designated structures.
6. Show the base zoning district use group (the most similar zoning district the PUD is based on) and if there is more than one show the size and location of each use group.
7. List any variances requested to each base use group and any other variances requested to the development standards within the TMC.
8. Show the proposed density, number and type of residential units with their maximum height.
9. Show the proposed types of any office, retail or industrial buildings with their height and floor area.
10. Proposed access points and internal roadways.
11. Numerous other data including signature blocks described in Section 18.190.050 of TMC.

At the option of the applicant, a PUD Rezoning may be submitted and processed as a Non-Programmed PUD or a Programmed PUD. A Non-Programmed PUD will have a PUD Master Plan showing proposed buildings, parking lots, loading areas, required and provided landscaping, sidewalks, and other items required for a PUD Site Development Plan in Section 18.190.060(c)(1) TMC. A Programmed PUD is more general in nature and will have its PUD Master Plan depicting

areas proposed for the different uses without going into specific details for buildings, parking lots, and required/provided landscaping and other items. Prior to the approval of any building permits, a Programmed PUD will also be required to submit a PUD Site Development Plan to show the site details described in Section 18.190.060(c)(1) for Planning staff review and approval (a separate review fee is also required). (A Non-Programmed PUD will not have to submit the review fee for a PUD Site Development Plan.)