

Memorandum

City of Lawrence

Planning & Development Services

TO: Planning Commission

FROM: Amy Miller, Planner II

Date: For May 20, 2013 Planning Commission Meeting

RE: Item No. 7: TA-12-00205-Text Amendment Regarding Requirements for Retail Market Study

The following memo serves to present background information to the request for this text amendment, provide for Planning Commission discussion and present options. If appropriate, provide direction to staff regarding the preferred option.

Background:

The Planning Office has been working with developers and other members of the public to identify areas of the Code which are seen as onerous or inefficient and to provide solutions to simplify and streamline the development process where possible. Currently, the Development Code requires that a retail market study be submitted for any proposal that includes 50,000 square feet of retail uses. This is intended to ensure a healthy retail market as development occurs in the city. Planning Staff maintains a bi-annual retail market study that provides valuable information about the overall health of the retail market. While specific market studies can provide important information about a project's potential impact on the market as well, the requirement to provide a study in addition to the one completed by staff is viewed by some as costly and time consuming when a prudent analysis of any proposal can be made with the information contained in staff's study. Therefore, on August 21, 2012, the City Commission initiated a text amendment to the Land Development Code, Chapter 20, Article 11 to modify the requirements for a Retail Market Study.

Discussion:

The current code language pertaining to Retail Market Studies in Section 20-1107 of the Land Development Code requires that the applicant submit an independent market study for site plan/development plan or zoning applications that will create more than 50,000 square feet of retail space. That market study is to be prepared by an independent consultant, at the applicant's expense, and should contain specific analysis on vacancy rates, mix of uses, square footage per capita, and other demand factors (income, population, sales, etc.). The independent consultant prepares that analysis using figures contained in the latest staff issued city-wide retail market report. Currently, the development code states that the staff issued city-

wide retail market report should be updated annually, but by practice, staff only updates this report bi-annually.

Of note, the code section contains two thresholds, vacancy rate and square footage per capita. Vacancy rate is computed by assuming that the project is entirely vacant upon completion, with a threshold set at 8%. In analyzing square feet per capita, the threshold is set at 100 square feet.

Staff has identified that the threshold for the standard, 50,000 square feet, is rather low. The Lawrence retail market contains over 9 million square feet of retail space, and in all cases, the impact of a project containing 50,000 square feet of retail space is negligible on the market.

Options:

Many options exist for modifying this section of the code as it pertains to the submission of a retail market study for specific projects, and those options are provided below, along with discussion points for each one. Staff is recommending Option 2.

Option 1: Keep the existing language in Section 20-1107 with no changes.

- Staff will produce the city wide retail market report, bi-annually, as resources allow.
- Applicants will be required to submit an independent, project specific retail market study.
- Requirement applies to both site plan/development plan and zoning map amendment applications which could create more than 50,000 square feet of retail space.
- 8% vacancy threshold and 100 square feet per capita threshold remain, but what is the impact on exceeding those thresholds on project approval?

Option 2: Staff will produce the city wide retail market report bi-annually and will use the most recent report to provide an analysis in the staff report for zoning applications. Submission of an independent retail market study by the applicant will no longer be required. Staff will bring revised code language back to the Planning Commission for consideration.

- Staff will produce the city wide retail market report bi-annually.
- Zoning map amendments will have an analysis of the projects' impact on the retail market included in staff reports.
- Applicants will no longer need to provide an independent, project specific retail market study.
- Requirement would be for zoning map amendments only. The requirement for site plan/development plan applications would be removed.
- In order to simplify the standards, the language would be moved to Section 20-1303 (g) under the decision making criteria for zoning map amendments.
- Is the threshold for triggering the requirement proper (50,000 square feet) or should that be raised?
- Should the thresholds for vacancy and square feet per capita remain criteria?

Option 3: Remove Section 20-1107 in its entirety and no longer review projects for their impact on the retail market or produce a city-wide retail market report.

- Staff will no longer produce the city wide retail market report.
- Projects will no longer be reviewed for their impact on the retail market.

CURRENT CODE LANGUAGE:

20-1107 RETAIL MARKET IMPACT ANALYSIS

(a) Applicability

An independent market impact analysis shall be required for any application for site plan or zoning that could result in 50,000 square feet or more of additional [Floor Area](#) for retail businesses in the City. Developments that would create less than 50,000 square feet of added retail space in the City or those that would reoccupy retail space that is already part of the City's retail database (whether currently occupied or currently vacant) shall be exempt from the independent market impact analysis.

(b) Definitions

- (1) A retail business shall be defined as one whose primary coding under the North American Industrial Classification System (NAICS) falls into at least one of the following sectors:
 - (i) Sector 44-4S: Retail Trade;
 - (ii) Subsector 722: Food Services and Drinking Places;
 - (iii) Subsector 811: Repair and Maintenance; and
 - (iv) Subsector 812: Personal and Laundry Services.
- (2) Retail space shall be defined as enclosed [Floor Area](#) that is principally intended for occupancy by any of the above kinds of retail businesses regardless of whether that space is vacant or occupied by other types of business.

(c) Criteria for Independent Market Impact Analysis

- (1) The independent market impact analysis will be undertaken by an independent consultant of the choosing of the applicant from a list of approved consultants certified for this analysis by the City of Lawrence.
- (2) The applicant shall have the cost of the independent market impact analysis and may choose the certified consultant based on competitive cost proposals.
- (3) The market impact analysis shall provide at least the following information:
 - (i) Verification that the facts and assumptions utilized by the applicant to determine market penetration and growth are valid and

reasonable. The independent consultant will not be required to repeat or create a market penetration or growth study, but will verify or criticize relevant studies that must be submitted by the applicant.

- (ii) Computation of a hypothetical citywide retail space vacancy rate using current (i.e., at time of application) data on the City's existing retail space vacancy rates. The independent consultant shall assume that the new retail space will either be entirely vacant when opened or will cause an equal amount of space elsewhere in the city to become vacant.
- (iii) Determination of the possible impact on the citywide retail vacancy rate of phased approaches to development of the proposed project. The independent consultant shall consider such factors as documented population and per capita income trends and projections in the City to determine if and when phases of development might be possible without exceeding the citywide vacancy rate threshold of 8.0 percent.
- (iv) Determination of the ratio of total citywide retail space (both occupied and vacant, whether by retail businesses or not), including all of the proposed retail space, to the City's population at the projected time of occupancy of the proposed new retail space. The independent consultant shall utilize the latest available citywide retail database, U.S. Census counts or estimates of the City's population and independent projections (including the consultant's own projections if properly documented). If this ratio of occupied space to population at the projected time of occupancy of the new space exceeds a value of one hundred (100) square feet per resident, the application may be denied or the applicant may be required to develop in phases to maintain the ratio at no more than 100.
- (v) Comparison of the mix of retail businesses proposed for the new retail space to the existing mix of retail businesses in (1) the Downtown Lawrence retail district, and (2) in the remainder of the City. The comparison will be based on NAICS codes to at least the five-digit level. This analytical comparison will be for economic development and planning information purposes only and will not singularly be the cause for denial of the application.
- (vi) Analysis of any other additional information that is reasonably required by the Lawrence Douglas County Metropolitan [Planning Commission](#), including, but not limited to analysis of the potential collective impacts of multiple and simultaneous retail development proposals.

(d) Responsibilities of the City

- (1) The Lawrence/Douglas County Metropolitan Planning Office will maintain a list of not less than three independent consultants who are certified by the Planning Office to conduct the research and analysis necessary for the market impact analysis reports. The Planning Office will, from time to time, require these consultants to participate in appropriate training and

informational sessions both to retain certification and to learn about new data and techniques suitable for the market impact analyses.

- (2) The Lawrence/Douglas County Planning Office will maintain a database of retail space and retail businesses in the City. This database will contain non-proprietary information, such as business name (or vacancy), address of the space, estimated [Floor Area](#) and land/[Parcel](#) area of the space, NAICS code of the establishment, general physical condition of the exterior of the space, zoning of the land/[Parcel](#), and related information that is readily [Accessible](#) and useable by the public, by City officials, applicants for retail space development or occupancy, and independent consultants. The database should undergo annual updating, including field research, at least annually, but may be subject to periodic updating as revised information is obtained during normal city government operations.

(e) Relationship of Market Impact Analysis to Project Approval

The market impact analysis shall be used in conjunction with the appropriate review and decision making criteria in the evaluation of zoning map amendment applications and decisions and approvals of development plans and site plans.



LEAGUE OF WOMEN VOTERS®
OF LAWRENCE/DOUGLAS COUNTY

May 19, 2013

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RE: ITEM NO. 7: TA-12-00205-TEXT AMENDMENT REGARDING REQUIREMENTS FOR RETAIL MARKET STUDY

To quote an excerpt from the current Staff Report on Item No. 3, the 2012 Retail Market Report, "For a healthy retail economy, it is important for there to be similar growth in income, population, retail sales tax dollars and inventory of stock." We agree that without an unbiased, carefully crafted market analysis, this information would not be available either to the Planning Staff or the citizens of Lawrence.

Therefore, we would like to voice our opinion on this issue of the Text Amendment to modify in Horizon 2020 (CP) and our Land Development Code (LDC) the requirement for applicants to provide case-specific analyses on the projected effect of their proposals on the City retail market.

We believe that the requirement on this issue as currently expressed in Horizon 2020 and the Land Development Code—**Option 1** in the Staff Report—should not be changed with the exception of two features: The specific Retail Market Report for the qualifying applications should be prepared by a consultant chosen by the City, rather than by the Applicant. Also, because an applicant's payment for such service could influence the outcome of the Report, we suggest that if the applicant is required to pay, the name of the applicant should be kept from the consultant, if possible. In addition, we suggest that an unbiased, professionally qualified third party should be a judge of the conclusions that are derived from the data in this application-specific report.

We also agree with the question raised by the staff as to what should be the outcome if the data indicate that the applicant's request exceeds the parameters established by the CP and the LDC. We suggest that limits should be included on how much, if any, the parameters can be exceeded for an application still to be acceptable.

Please accept our comments on this issue, and work toward improving the existing regulations rather than revising them as suggested in Option 2. Thank you for your consideration.

Sincerely yours,

Cille King
Cille King
Co-President

Alan Black
Alan Black, Chairman
Land Use Committee

ITEM NO. 7 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; RETAIL MARKET STUDY (AAM)

TA-12-00205: Consider a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, Article 11, to modify the requirements for a Retail Market Study. *Initiated by City Commission on 8/21/12.*

STAFF PRESENTATION

Ms. Amy Miller presented the item.

PUBLIC HEARING

Ms. Cille King, League of Women Voters, asked that they keep the current plan and make two additional improvements. She felt they should make the reports annual instead of bi-annual because there was a lot of market fluctuation that would not be noted in a report every two years. She felt the consultant should be chosen by the City and hired independently.

COMMISSION DISCUSSION

Commissioner Josserand felt the issue had some magnitude that they should discuss longer. He recommended deferral of the item.

Commissioner Hird commented about the League of Women Voters letter. He said he had a difficult time making the assumption that consultants were swayed by being paid by an applicant. He said consultants were professionals and he had a hard time with the idea that it was presumed consultants would put their reputation on the line for x amount of dollars. He said unless there was some evidence that it had actually occurred he did not want to go down that road. He said staff wasn't asking for a vote, they were asking to pursue an option.

Commissioner Burger asked for an example of a 50,000 square foot project.

Ms. Miller said an example would be Dillons on Massachusetts.

Commissioner Culver said one part that caught his eye was that the Development Code states that the staff city wide retail report should be updated annually but by practice staff only updates it bi-annually. He asked for clarification on that.

Mr. McCullough said it came down to resources and priorities in the department and the ability to get to it. He said the value of the Code requirement was to understand the general health of the market. He said was obtained through studies and reports. He stated the market was not doing a whole lot and was pretty constant the past five years.

Commissioner Culver inquired about the information provided in the independent retail studies.

Mr. McCullough said staff reviews them and provides comments and questions and the studies are thoroughly vetted by the time they are accepted.

Ms. Miller said in recent years there was only one consultant in the area so every market study had been prepared by that one consultant. She said there was a list, according to the Code, that had to be included in the market study. She said that list was also the same list that staff bases the analysis on and includes in the staff report. She said in all cases so far the same consultant had gone above and beyond by including extra information. She said that information was based on one person's methodology on what the demand of the market might be. She said the majority of the information in the market study and the majority of information included in the Code section for review was simple math.

Commissioner von Achen asked if the term bi-annual was used to mean two times a year or every two years.

Ms. Miller said every two years.

Commissioner Josserand said some of the things in Option 2 appealed to him. He said he did not see a problem with narrowing the scope of projects. He felt 50,000 square feet was probably too small.

Commissioner Burger said she liked some of Option 2. She liked that the 50,000 square feet took into account neighborhood dynamics. She was not sure that 50,000 square feet would be totally appropriate. She did not think requiring an independent market study was necessary, especially since there was only one person currently doing them. She said staff does such a good job with giving the numbers needed that if an applicant does not agree with the staff numbers they can hire an independent consultant themselves. She did not feel Option 3 was not a good idea because they need to keep an eye on what the retail market was telling them.

Commissioner Blaser felt 50,000 square feet was probably too small. He was not that concerned if they took the vacancy and square foot per capita out of the threshold.

ACTION TAKEN

Motioned by Commissioner Hird, seconded by Commissioner Blaser, to adopt Option 2 with staff providing options with regard to the square footage requirement.

Unanimously approved 10-0.