

PLANNING COMMISSION REPORT

Regular Agenda -- Public Hearing Item

PC Staff Report
06/26/13

ITEM NO. 6 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.*

RECOMMENDATION: Staff recommends that the Planning Commission forward a recommendation for approval of the proposed amendment TA-12-00205 to the Land Development Code to the City Commission based on the analysis in the staff report.

Reason for Request: Currently, submission of an independent Retail Market Study is required for proposals that would create more than 50,000 square feet of retail space. This can be costly and time consuming for the applicant when an alternative exists to study the health of the market.

RELEVANT GOLDEN FACTOR:

- This text amendment is in conformance with the spirit of the Comprehensive Plan, which will revise the Land Development Code. Depending on the outcome of this text amendment, specific language will need to be amended in the Comprehensive Plan.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- Staff presented a memo to the Planning Commission at their May 20, 2013 meeting to seek guidance on the drafting of specific language. At that time, public comment was received from the League of Women Voters.

OVERVIEW OF PROPOSED AMENDMENT

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 biennial (every two years) 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.

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 biennially.

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.

Therefore, staff is proposing the following:

- 1) Move the requirement for a retail market review to Section 20-1303 (g) under the decision making criteria for zoning map amendments.
 - a. Zoning map amendments will have an analysis of the projects' potential impact on the retail market included in staff reports.
 - b. The analysis would be completed for zoning map amendments that would create more than 100,000 square feet of retail in the City.
 - c. Applicants will no longer need to provide an independent, project specific retail market study.
 - d. Remove the thresholds of 8% for the vacancy rate and 100 square feet per capita.
- 2) In Section 20-1107, retain the definition of retail, and the requirement that staff will produce a city-wide retail market report biennially.

See the attached draft language in Section 20-1107 and 20-1303. Changes are noted in red and underlined and the deletions are ~~struck through~~.

CONFORMANCE WITH THE COMPREHENSIVE PLAN

This text amendment is in conformance with the spirit of *Horizon 2020*, specifically Chapter 6, Policies 1.7 and 3.15. Depending on the outcome of this text amendment, specific language contained in those policies may need to be altered to better match what is adopted in the Land Development Code.

CRITERIA FOR REVIEW AND DECISION-MAKING

Section 20-1302(f) provides review and decision-making criteria on proposed text amendments. It states that review bodies shall consider at least the following factors:

- 1) **Whether the proposed text amendment corrects an error or inconsistency in the Development Code or meets the challenge of a changing condition; and**

The proposed text amendment the result of a change in condition in order to continuously improve the development process. The proposed change maintains the intent of the original standard, to determine the impact of retail proposals on the health of the overall retail market, but streamlines the process by not requiring the applicant to bear the cost and provide an independent market analysis.

- 2) **Whether the proposed text amendment is consistent with the Comprehensive Plan**

and the stated purpose of this Development Code (Sec. 20-104).

The proposed text amendment is consistent with the Comprehensive Plan by requiring an analysis of the proposed projects' impact on the health of the retail market. Depending on the outcome of this text amendment, specific language contained in *Horizon 2020*, specifically Chapter 6, Policies 1.7 and 3.15 may need to be altered to better match what is adopted in the Land Development Code.

20-1107 RETAIL MARKET ~~IMPACT ANALYSIS~~

~~(a)~~ (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)~~ (a) 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)~~ (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)~~**(b)** 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 and produce a city-wide retail market report biennially that includes an analysis of both the supply and demand sides of the retail market. 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.~~

20-1303 ZONING MAP AMENDMENTS (REZONINGS)

(a) Initiation

An amendment to the zoning map may be initiated by the City Commission, the [Planning Commission](#), or, as to Urban Conservation district, by the Historic Resource Commission; and adopted in accordance with the rules of that body. Applications for zoning map amendments initiated by the [Landowner](#) shall be filed with the [Planning Director](#). Any proposed amendment shall follow the process set forth in this section after initiation.

(b) Application Contents

- (1) An application for amendment shall be accompanied by a conceptual plan and data necessary to demonstrate that the proposed amendment is in general conformance with the [Comprehensive Plan](#) and that the public necessity and convenience; and general welfare require the adoption of the proposed amendment.
- (2) The application shall include a General Location Map, which shall show the location of the property in relation to at least one intersection of two streets shown as [Collector](#) or [Arterial Streets](#) on the City's Major Thoroughfares Map of the [Comprehensive Plan](#).
- (3) Each application for an amendment to the [Zoning Districts](#) map shall be accompanied by a certified list of all property [Owner](#) within the notification area. If such proposed amendment is not a general revision of the existing regulations and affects specific property, the property shall be designated by legal description or a general description sufficient to identify the property under consideration. In addition to a published notice, written notice of such proposed amendment shall be mailed at least 20 days before the hearing to all [Owner](#) of record of lands located within at least 200 feet of the area proposed to be altered for regulations of the city. If the city proposes a zoning amendment to property adjacent to the city's limits, the area of notification of the city's action shall be extended to at least 1,000 feet in the unincorporated area. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available.

(c) Public Hearing Notice

Newspaper, posted and mailed notice of the [Planning Commission's](#) public hearing shall be provided in accordance with Section 20-1301(p)(3). For purposes of K.S.A. §12-757, any [Zoning District](#) listed in the right-hand column of the Lesser Change Table that follows shall be considered a "lesser change" than a change to the [Zoning District](#) listed in the left-hand column of the same row of the table; in accordance with the cited section, a recommendation or action to amend the zoning map to assign the "lesser change" [Zoning District](#) to the land, rather than the [Zoning District](#) advertised in the notice, shall not require further notice. A recommendation or action to amend the Zoning Map to assign any [Zoning District](#) other than the one advertised in the notice or one included in the corresponding right-hand column of the Lesser Change Table will be inconsistent with the advertised hearing and shall require re-advertising and the holding of a new hearing, after proper notice. Such recommendation or action by the [Planning Commission](#) or the City Commission shall be construed as an instruction to the [Planning Director](#) to set a new hearing and to give notice of the proposed hearing, including the new [Zoning District](#) in the notice.

Table of Lesser Changes	
Advertised/Proposed Zoning District	Districts to be Considered a “Lesser Change”
RS40	None
RS20	RS40
RS10	RS20 or RS40
RS7	RS10, RS-20 or RS40
RS5	Any other RS except RS3 or RSO
RS3	Any other RS except RSO
RSO	Any other RS except RS-3
RM12, RM12D	Any RS except RSO
RM15	RM12 or any RS except RSO
RM24	RM15, RM12 or any RS except RSO
RM32	Any RM or any RS
RMG	Any RM or any RS
RMO	RM15, RM12 or any RS
CN1	None
CN2	CN1, RSO or RMO
CD	CN1, CN2 or CC200
CC200	CN1 or CN2
CC400	CC200 or CN2
CC600	CC400, CC200 or CN2
CR	CC600, CC400 or CC200
CS	CN1, CN2 or CO
IBP	None
IL	IBP or CN2
IM	IBP or IL
IG	IL, IM, IBP, or CN2
Other Zoning Districts	Not Applicable

(d) Staff Review/Report

The **Planning Director** will review each proposed zoning map amendment in accordance with the review and decision-making criteria of Subsection (g) of this Section and, if deemed necessary, distribute the proposed amendment to other agencies and reviewers. Based on the results of those reviews, the **Planning Director** will provide a report on the proposed amendment to the **Planning Commission** and City Commission. The report will include documentation proof of posting and other required notice.

(e) Planning Commission’s Review/Recommendation

The **Planning Commission** shall hold a public hearing on the proposed zoning map amendment, review the proposed amendment in accordance with the review and decision-making criteria of Subsection (g) of this Section and recommend that the City Commission approve, approve with modifications or deny the proposed amendment. The **Planning Commission** is also authorized to forward the proposed amendment to the City Commission with no recommendation.

(f) City Commission Decision

After receiving the [Planning Commission](#)'s recommendation, the City Commission shall take one of the following actions on the proposed zoning map amendment:

- (1) approve, approve with conditions or modifications, or deny; or
- (2) return the application to the [Planning Commission](#) for further consideration, together with a written explanation of the reasons for the City Commission's failure to approve or disapprove.
 - (i) The [Planning Commission](#), after considering the explanation by the City Commission, may resubmit its original recommendations with its reasons for doing so or submit a new or amended recommendation.
 - (ii) Upon the receipt of such recommendation, the City Commission may, by a simple majority vote, approve the proposed zoning map amendment, approve it with modifications, or deny it.
 - (iii) If the [Planning Commission](#) fails to deliver its recommendations to the City Commission following the [Planning Commission](#)'s next regular meeting after receipt of the City Commission's report, the City Commission will consider such course of inaction on the part of the [Planning Commission](#) as a resubmission of the original recommendations and proceed accordingly.
- (3) The City Commission may act by a simple majority vote, except for the following cases:
 - (i) action that is contrary to the [Planning Commission](#)'s recommendations, in which case the decision shall be by a 2/3 majority vote of the full membership of the City Commission; or
 - (ii) approval, or approval with modifications, when a valid protest petition has been submitted in accordance with subsection (g)(9) of this Section, in which case a decision approving the application shall be effective only if supported by the votes of at least 3/4 of the members of the entire City Commission.
- (4) The City Commission shall:
 - (i) State the reasons for its decision on the minutes or official record; and
 - (ii) notify the applicant, and all other parties who have made a written request for notification, in writing of its decision and the reasons for its decision.

(g) Review and Decision-Making Criteria

In reviewing and making decisions on proposed zoning map amendments, review and decision-making bodies shall consider at least the following factors:

- (1) conformance with the [Comprehensive Plan](#);
- (2) zoning and use of nearby property, including any overlay zoning;
- (3) character of the neighborhood;
- (4) plans for the area or neighborhood, as reflected in adopted area and/or sector plans including the property or adjoining property;
- (5) suitability of the subject property for the uses to which it has been restricted under the existing zoning regulations;
- (6) length of time the subject property has remained vacant as zoned;
- (7) the extent to which approving the rezoning will detrimentally affect nearby properties;
- (8) the gain, if any, to the public health, safety and welfare due to denial of the application, as compared to the hardship imposed upon the [Landowner](#), if any, as a result of denial of the application; and
- (9) the recommendation of the City's professional staff.
- (10) for proposals that will create more than 100,000 square feet of retail space within the city: the impact of the proposed project on the retail market. Staff will provide an analysis based on the addition of the square footage to the retail market, vacancy rate trends, square footage per capita trends, and current demand trends, including but not limited to population, income, pull factors, and retail sales using the latest available city-wide retail market report.

(h) Protest Petitions

A valid protest petition opposing a zoning map amendment may be submitted to the City Clerk within 14 days of the conclusion of the [Planning Commission's](#) public hearing.

- (1) A protest petition will be considered "valid" if it is signed by the [Owner](#) of 20% or more of:
 - (i) any real property included in the proposed amendment; or
 - (ii) the total real property within the area required to be notified of the proposed rezoning, excluding streets and public ways.
- (2) In the case of joint Ownership, all [Owner](#) shall sign the petition.
- (3) For the purpose of determining the sufficiency of a protest petition, if the proposed rezoning was requested by the [Owner](#) of the specific property subject to the rezoning, or the [Owner](#) of the specific property subject to the rezoning does not oppose in writing such rezoning, such property

shall be excluded when calculating the total real property within the area required to be notified.

(i) Date of Effect

The zoning map amendment will become effective upon publication of the adopting ordinance.

(j) Limitation on Successive Applications

- (1) Withdrawal of an original application after it has been advertised for public hearing shall constitute denial of the application as if the public hearing had been held and concluded;
- (2) A successive application shall not be accepted for a period of twelve (12) months from the date of City Commission denial of the original application unless a successive application is substantially different from the original application that was denied;
- (3) A successive application shall not be accepted until 120 days after the date of the City Commission denial and then will only be accepted if substantially different from the original application. The threshold for measuring substantially different shall be based on meeting one or more of the following criteria:
 - a. A different [Zoning District](#) category has been applied for;
 - b. The same [Zoning District](#) category has been applied for and the [Density](#) of use is at least 25% greater or less than the original petition;
 - c. The same [Zoning District](#) category has been applied for and the intensity of use is at least 25% greater or less than the original petition; or
 - d. Specific responses to the reasons for denial set forth in the findings of fact by the City Commission are, in the opinion of the [Planning Director](#), addressed in the resubmission.
- (4) A new rezoning application may be submitted after at least twelve (12) months from the date of City Commission denial.

(k) Appeals

Within 30 days of the City Commission's decision on the zoning map amendment, any person aggrieved by such decision may maintain an action in District Court to determine the reasonableness of the final decision.

(l) Plans

- (1) A plan shall be prepared and adopted prior to review of a petition for map amendment when:

- (i) No water or sanitary sewer mains exist or are planned to serve the proposed site;
 - (ii) The request is not consistent with adopted plans; or,
 - (iii) In-fill development is proposed and, at the discretion of the [Planning Commission](#), additional information is needed specific to unanswered questions or concerns related to transportation, compatibility of land use(s), or adequacy of transitions between established and proposed land uses.
- (2) Depending on the size or type of request, the plans to be prepared include:
 - (i) Watershed or Sub-basin Plan. This Plan will encompass an entire watershed or sub-basin.
 - (ii) Sector Plan. This Plan includes approximately one square mile.
 - (iii) Neighborhood Plan. This Plan encompasses a specific neighborhood.
 - (iv) Special Area Plan. This includes a Nodal Plan which plans for an area immediately surrounding an intersection. A Corridor Plan is a type of linear area plan that generally encompasses a roadway or specific feature.
 - (v) Specific Issue/District Plan. Deals with a specific issue or project that does not fall into any of the above listed categories.

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