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**PLANNING COMMISSION REPORT**  
**Regular Agenda -- Public Hearing Item**

PC Staff Report  
12/19/2018

**ITEM NO. 4            TEXT AMENDMENT TO LAND DEVELOPMENT CODE; CONDITIONAL ZONING (SLD)**

**TA-18-00430:** Consider a Text Amendment to the City of Lawrence Land Development Code, Articles 13 to define and clarify the use of conditional zoning. *Initiated by Planning Commission on August 22, 2018.*

**RECOMMENDATION:** Staff recommends the Planning Commission forward the proposed amendment, TA-18-00430, amending Article 13 of the Lawrence Land Development Code to the City Commission with a recommendation to approve the amended text.

**PUBLIC COMMENT RECEIVED PRIOR TO PRINTING**

- None received

**ATTACHMENTS**

- A. Lesser Change Table Exhibit
- B. Section 20-1301 General Development Procedures - Existing Text
- C. Section 20-1303 Zoning Map Amendments (Rezoning) – Existing Text
- D. Proposed Text Amendment Articles 20-1301 and 20-1303

**BACKGROUND**

On March 20, 2018, the City Commission considered a rezoning request (Z-17-00689) which included conditions. At that meeting, the City Commission expressed disfavor in the use of conditional zoning and directed staff to review the use of this tool with the intent of removing conditional zoning from the Land Development Code.

On May 23, the Lawrence-Douglas County Metropolitan Planning Commission conducted a public hearing to discuss the merits of conditional zoning related to text amendment TA-18-00154. Staff reviewed how conditional zoning has been applied since 2006 using specific density restrictions, commercial retail caps, processing requirements, and use restrictions to implement specific land use goals of *Horizon 2020* and other applicable area and neighborhood plans.

The tool has been valuable and flexible addressing sensitive infill development and redevelopment projects that could have significant neighborhood impacts. On May 23, 2018, The Planning Commission passed a motion, by an 8-1 vote, to retain the existing code language maintaining conditional zoning in the Land Development Code.

The City Commission received this recommendation on July 17, 2018 and cautiously concurred with the recommendation that directs staff to discuss the topic again with the Planning Commission to determine if the language could be. The topic was further considered by the Planning Commission on August 22, 2018. The Planning Commission voted unanimously to initiate a text amendment to the City of Lawrence Land Development Code to define and clarify the use of conditional zoning.

For the purpose of this discussion, conditional zoning refers to conditions placed on conventional base zoning districts. That is to say, a rezoning or zoning request that is not for a special use permit, a planned development, or part of a site plan. Conditional zoning excludes previous Planned Development overlays that include restrictions or conditions to either the plan or the associated zoning district.

Frequently, conditions included in zoning applications are self-identified by an applicant as part of a proposal to be transparent about the intended use of the property.

## **ANALYSIS**

Since 2006, the City of Lawrence has approved 35 zoning map amendments (rezoning) applications that included a condition or restriction. Common restrictions include limitations on the maximum residential density or commercial retail square footage. Others prohibit or limit certain uses that would otherwise be permitted by right in a specific district. In each case, the restriction was directly related to the context of the surrounding area with an intent to preserve the character of the area, to implement goals and policies of *Horizon 2020* or incorporated specific plans, or provide additional public processes such as City Commission review and approval of a site plan. An example of this conditional zoning requiring an extraordinary approval exists in the Inverness Park Plan Area. Both 3905 Clinton Parkway and 4300 W. 24<sup>th</sup> Place require City Commission approval of any site plan for otherwise conventional zoning. This condition was established through the neighborhood planning process and implemented in the rezoning applications providing additional notice to the neighborhood of any development application.

The Land Development Code currently includes certain provisions that may be conditions or restrictions of an application that a review body may consider:

- Less intense use or zoning district than indicated in the application (20-1301 (i) (3)).
- Reduce the impact of the development.
- Reduce the amount of land area included in the application.
- Execution of a Development Agreement (20-1301 (i) (4)).
- Compliance with the Access Management Standards.
- Compliance with the Community Design Manual.
- Reduce maximum density or intensity. (20-1301 (i) (6)).

These same provisions are granted to the decision making body in Section 20-1301 (j) (3-6).

*Conditional zoning* is intended to mitigate adverse impacts that can be reasonably expected to occur without imposing such conditions on an otherwise appropriate land use development project. Conditions must be reasonable and further the public health, safety, and welfare of the community and be consistent with the community's comprehensive plan, or further a community or neighborhood goal or policy.

When reviewing any rezoning application there is a unique set of facts associated with that specific property. The analysis of the rezoning includes the assessment of specific criteria (findings of fact) through a regimented process. Adherence to this process prevents spot zoning. Disregard of these findings and process could result in spot zoning.

Section 20-1303 (g) states,

*In reviewing and making decisions on proposed zoning map amendments, review and decision – making bodies shall **consider at least the following factors. (Emphasis added)***

The review of a conditional zoning request would be considered with these criteria and the additional considerations.

## OVERVIEW OF PROPOSED AMENDMENT

This section of the report includes the existing and revised conditional zoning language for consideration. There are two sections of the Land Development Code that are key to the foundation of this land use entitlement tool. Section 20-1301 provides general provisions for all processes and application processes governed by the Land Development Code. Section 20-1303 is specific to zoning map amendments (rezoning applications). Changes to specific text are constrained to only address rezoning applications. The intent of the proposed language is to add criteria for evaluating requested conditional zoning.

Affected Section:

Article 13 Development Review Procedures

20-1301	General <i>[this section applies to all procedures of the Land Development Code]</i>
20-1303	Zoning Map Amendments (Rezoning)

## PROPOSED DEFINITION

***Conditional Zoning:*** *The attachment of special conditions or restrictions to a rezoning. Conditions can include, but are not limited to restrictions as to use, size, design, density or intensity of development and/or development timing as a means to mitigate potential adverse impacts that could be expected to occur without imposing such conditions.*

## 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;**

This text amendment to the Land Development Code is proposed in response to a need identified by the City Commission and Planning Commission to define and clarify the use of conditional zoning. This amendment refines the Land Development Code and is not required due to an error or inconsistency.

### **2) Whether the proposed text amendment is consistent with the Comprehensive Plan and the stated purpose of this Code (Sec. 20-104)**

Specific goals of the *Horizon 2020* state the intent to protect and preserve neighborhood character, provide compatible infill development, and encourage appropriate commercial development scaled in size and intensity to the surrounding area. These overall goals are found in the principal strategies listed in Chapter 3, General Plan Overview; Chapter 5, Residential Land Use; Chapter 6 Commercial Land Use; and Chapter 7 Industrial and Employment-Related Land Use. Conditional zoning, when used judiciously and thoughtfully, is an appropriate tool to implement the goals and policies of the comprehensive plan.

## Conclusion

The application of conditional zoning should be used judiciously, when all other options have been exhausted, when a clear neighborhood goal can be achieved, and/or when a clear harm to the surrounding area can be demonstrated. This proposed text amendment is intended to articulate a definition of conditional zoning, as well as establish criteria for its application. Minor changes to the format of Sections 20-1301 and 20-3013 are proposed to improve readability and to formally incorporate conditional zoning.