

*REVISED*

**PLANNING & ZONING COMMISSION MEETING OF 9/11/12 AGENDA ITEM #12-078M**

**AGENDA ITEM**

**TO:** Planning and Zoning Commission

**FROM:** Michael Quint, Director of Planning

**SUBJECT:** Conduct a Public Hearing to Consider/Discuss the Request by the City of McKinney, to Amend Section 138-429 (Location – Generally) of the Code of Ordinances Pertaining to Sexually Oriented Businesses; to Amend Sections 5 (Approval Required), 8 (Variances and Appeals), 9 (Definitions), 73 (General Development Plan), 74 (Preliminary-Final Plat), 75 (Preliminary-Final Replat), 76 (Record Plat), 77 (Minor Plat), 78 (Minor Replat), 79 (Amending Plat), 81 (Conveyance Plat), 99 (Lots), 105 (Improvements), 106 (Screening and Buffering of Certain Residential Lots Adjacent to Streets), and 157 (Conveyance of Land Requirements) of the Subdivision Ordinance (Chapter 142 of the Code of Ordinances); to Amend Sections 40 (Nonconforming Uses and Nonconforming Structures), 41 (Specific Use Permits), 42 (Temporary Uses), 44 (Access Management Plan Approval), 45 (Site Plan Approval), 46 (Definitions), 67 (AG – Agricultural District), 68 (RED-1 – Residential Estates District), 69 (RED-2 – Residential Estates District), 70 (RS 120 – Single Family Residence District), 71 (RS 84 – Single Family Residence District), 73 (RS 60 – Single Family Residence District), 74 (RS 45 – Single Family Residence District), 75 (RD 30 – Duplex Residence District), 77 (RG 25 – General Residence District), 78 (RG 18 – General Residence District), 79 (MF-1 – Multi-Family Residential – Low Density District), 80 (MF-2 – Multi-Family Residential – Medium Density District), 81 (MF-3 – Multi-Family Residential Medium-High Density District), 83 (NC – Neighborhood Convenience District), 84 (BN – Neighborhood Business District), 85 (BG – General Business District), 86 (C – Planned Center District), 87 (O-1 – Neighborhood Office District), 88 (O – Office District), 89 (BC – Commercial Business District), 90 (ML – Light Manufacturing District), 91 (MH – Heavy Manufacturing District), 95 (MTC – McKinney Town Center District), 96 (CHD – Commercial Historic District), 130 (Vehicle Parking), 131 (Off-Street Loading), 132 (Fences, Walls, and Screening), 133 (Accessory Buildings and Uses), 134 (Performance Standards), 135 (Landscape Requirements), 137 (Communications Antennas, Satellite Dishes and Support Structures/Towers), 139 (Architectural and Site Standards), 162 (Administrative Official), 164 (Changes and Amendments), 165 (Board of Adjustment), Appendix C (Historic District Maps), Appendix F-1 (Schedule of Yards and Setbacks), Appendix F-2 (Schedule of Heights, Areas, and Densities), and Appendix F-4 (Schedule of Uses) of the Zoning Ordinance (Chapter 146 of the Code of

Ordinances); to Create Sections 42 (Dormancy and Approval Expirations) and 82 (Administratively Complete) of the Subdivision Ordinance (Chapter 142 of the Code of Ordinances); to Create Sections 102 (RS SM – Single Family Residence District) and 141 (Residential Development Design Standards) of the Zoning Ordinance (Chapter 146 of the Code of Ordinances); and to Modify Section 138-429 (Location – Generally) of the Code of Ordinances Pertaining to Sexually Oriented Businesses.

**APPROVAL PROCESS:** Final action regarding these proposed amendments to the Code of Ordinances will occur at a joint Planning and Zoning Commission/City Council meeting which will be held on October 1, 2012.

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**STAFF RECOMMENDATION:** Staff recommends the Planning and Zoning Commission consider and discuss the proposed amendments to Chapters 138 (Sexually Oriented Businesses), 142 (Subdivision Regulations) and 146 (Zoning Regulations) of the Code of Ordinances.

**ITEM SUMMARY:** Staff has compiled a list of proposed amendments to the Zoning and Subdivision Ordinances as well as Chapter 138 of the Code of Ordinances pertaining to the location of sexually oriented businesses. These amendments are generally meant to increase residential quality, streamline the development process, comprehensively update antiquated and outdated regulations, address development issues, and rectify typos, discrepancies, and unclear provisions. These amendments are comprehensive in nature as they are updating some regulations that have not been significantly modified since the 1960's when they were created.

**PROPOSED AMENDMENTS:** The proposed ordinance amendments are discussed in more detail below:

- **Proposed 138-429 Changes (Location of Sexually Oriented Businesses):** This section is being modified to correspond with a change that is being proposed to the Schedule of Uses. Staff is proposing to limit sexually oriented businesses to being allowed only in the “MH” – Heavy Manufacturing District. Currently, there are no sexually oriented businesses within the City of McKinney's corporate limits.
- **Proposed 142-5 Changes (Approval Required):** This section is being modified to clarify what properties must be included within a plat when attempting to subdivide property. Currently, when property is subdivided the entire parent tract must be included on the plat. These amendments are meant to make this requirement clearer. No existing development and/or platting requirements are changing through this amendment.
- **Proposed 142-8 Changes (Variances and Appeals):** This section is being modified to allow the applicant or City Staff to appeal the actions of the Planning

and Zoning Commission regarding plat applications to the City Council. Currently, the regulations only permit the applicant of a case or a case's property owner to appeal the actions of the Commission to the City Council. The proposed amendments will allow City Staff to appeal the Commission's actions to the City Council as well.

- Proposed 142-9 Changes (Definitions): This section is being modified to correspond with changes that are being made to Section 142-5 regarding what properties must be included within a plat when attempting to subdivide property. No existing development and/or platting requirements are changing through this amendment.
- Proposed 142-42 (Dormancy and Approval Expirations): This section is being created to establish approval expiration timelines for the various platting and general development plan processes. Currently, only preliminary-final plats and preliminary-final replats have expiration dates. Expiration dates for general development plans and plats are important because engineering design standards change over time with modern advances in engineering trends and life safety standards. If a plat were approved under one standard and the development failed to be constructed until some later time when standards were different, the safety of the previous plat's design and its development could come in to question. The Texas State Legislature recognized this importance and, in 1999, granted regulatory agencies the ability to enact expiration dates on a permit and project. Staff is proposing to adopt a 5 year approval expiration timeline for plats.

These proposed approval expirations will apply to all plats that are approved on or after the effective date of the proposed ordinance amendments (October 8, 2012). All plats approved prior to the effective date of this ordinance or that are subject to an approved and executed developers or facilities agreement will be exempt from the proposed approval expiration timelines.

- Proposed 142-73 (General Development Plan): This section and the process which is established herein is being removed. In Staff's continuing effort to streamline the development process, each of the Planning Department application types that currently exist were re-evaluated to ensure that they are worthwhile and serve a necessary purpose. As part of this evaluation, it was determined that the general development plan process does not provide a lot of benefit as the information that is generally shown on these plans is shown by a site plan and or plat. General development plans may still be required by some existing "PD" – Planned Development Districts and for some developments in the "REC" – Regional Employment Center Overlay District. Applicants may choose to submit a general development plan to better illustrate a development proposal but the elimination of this process as a requirement should help to streamline the development process by as much as one month in some cases.

- Proposed 142-74 through 142-79 Changes (Preliminary-Final Plat, Preliminary-Final Replat, Record Plat, Minor Plat, Minor Replat, Amending Plat): These sections are being modified to clarify approval procedures for existing plat types, to modify existing standard notations that are provided on plats by the subdivider to confirm that the plat conforms to requirements of the governing zoning district and Subdivision Ordinance (as applicable), and to require information that would otherwise be shown and approved on an access management plan. Staff is proposing to eliminate the access management plan process in order to streamline the development process.
- Proposed 142-81 Changes (Conveyance Plat): This section is being modified to clarify when conveyance plats may be utilized and to emphasize that properties that have only been conveyance platted may not have direct access to all utilities that are needed for development. No existing development and/or platting requirements have changed through this amendment other than the standard notation that must be provided on the plat was modified.
- Proposed 142-82 (Administratively Complete): This section is being created in order to clarify when the state mandated 30 day review period for plats begins. §212.009(a) of the Local Government Code states: “The municipal authority responsible for approving plats shall act on a plat within 30 days after the date the plat is filed...” Currently, this 30 day review period starts when a plat application is submitted, even though the submittal package may not be complete (may be missing plans, application, letter of intent, or other necessary information). This proposed section grants the Directors of Planning and Engineering to determine when a plat application submittal is complete thereby initiating the required 30 day review period.
- Proposed 142-99 Changes (Lots): This section is subject to a large number of proposed modifications including, but not limited to clarifying when natural areas on a plat must be filed for record, what types of lots must have frontage on a public street (single family and duplex residential), and modifications to address the proposed elimination of the access management plan process.

Currently, the ordinance does not contain any regulations mandating when land next to creeks or other natural areas must be filed for record. As such, several developers have preliminary-final platted their property in such a manner so as to create tracts of land only containing natural areas and frontage on those areas. By record platting all of the adjacent proposed lots and refraining from filing lots adjacent to natural areas, developers are able to circumvent creek improvements, hike and bike trails construction, and other requirements typically found adjacent to a natural area. The proposed amendments will mandate that these natural area lots be filed at or before 50% of the parent tract’s developable area is filed for record.

- Proposed 142-105 Changes (Improvements): This section is being modified to change the location where required hike and bike trails can be found (Master Hike and Bike Trails Plan rather than the Comprehensive Plan).
- Proposed 142-106 Changes (Screening and Buffering of Certain Residential Lots Adjacent to Streets): This section is being modified to simplify and streamline the screening and buffering requirements while improving overall residential neighborhood quality. The Arborist has drafted modifications to the permitted screening and buffering options that are intended to result in more appealing vehicular corridors and more open spaces/landscaping which result in improvements to the character of proposed residential subdivisions. These amendments will also allow developers to request additional time in which to install required screening and buffering improvements.
- Proposed 142-157 Changes (Conveyance of Land Requirements): This section is being modified to change the ratio of floodplain land that can count toward parkland dedications. Currently, 3 acres of floodplain land is accepted as 1 acre of nonfloodplain land. The Parks, Recreation, and Open Space Department is proposing to modify this ratio so that 10 acres of floodplain land will be accepted as 1 acre of nonfloodplain land.
- Proposed 146-40 Changes (Nonconforming uses and nonconforming structures): This section is being modified to clearly address three distinct types of non-conformities; non-conforming lots, non-conforming uses, and non-conforming structures. The current regulations are confusing and do not clearly dictate how to address each type of non-conformity.
- Proposed 146-41 Changes (Specific Use Permits): This section is being modified to correspond with changes that are being made to the Schedule of Uses. Specifically, the zoning districts where specific use permits are being removed and are being replaced by references to the Schedule of Uses. These changes should assist in making future amendments to the ordinances easier and less verbose.
- Proposed 146-42 Changes (Temporary Uses): This section is being modified to clearly indicate how long unspecified temporary uses are allowed. Other changes include references to the Schedule of Uses.
- Proposed 146-44 Changes (Access Management Plan Approval): This section is being removed. The access management plan process is an unnecessary step in the development process which only serves to hinder the speed and efficiency in which a project moves forward to construction. The information that is currently shown on an access management plan will now be shown on a plat map.
- Proposed 146-45 Changes (Site Plan Approval): This section is being modified at Council Member Harris' request to allow all site plan applications to be approved

at a Staff level. Site plans that Staff cannot approve or that require a special approval will still be forwarded to the Planning and Zoning Commission for action. This modification should help to streamline the development process and should reduce situations where residents show opposition to an issue only to have the Planning and Zoning Commission approve the site plan because of its ministerial nature. This modification was originally proposed by Staff approximately 2 years ago but was abandoned in favor of a different approval sequence.

- Proposed 146-46 Changes (Definitions): This section is subject to a large number of proposed modifications including, but not limited to the creation of new definitions, the clarification and refining of existing definitions, and other miscellaneous changes that correspond to changes in the Schedule of Uses. Changes to this section should result in fewer necessary Staff interpretations and should assist the development community in knowing what a given land use or term means.
- Proposed 146-67 through 146-71, 146-73 through 146-75, 146-77 through 146-81, 146-83 through 146-91, 146-95, 146-96 Changes (AG, RED-1, RED-2, RS 120, RS 84, RS 60, RS 45, RD 30, RG 25, RG 18, MF-1, MF-2, MF-3, NC, BN, BG, C, O-1, O, BC, ML, MH, MTC, CHD Districts): These sections are being modified in order to update the applicable space limits and development standards, update allowed and prohibited land uses, remove redundant provisions, and clarify the regulations applicable to each zoning district. These comprehensive changes should allow for additional flexibility with regard to the physical development of a given property in a specific zoning district but also ensure that the interests of adjacent property owners are protected.
- Proposed 146-102 (RS SM – Single Family Residence District): This section is being created to eliminate an existing disconnect between the City's Comprehensive Plan and the Zoning Ordinance. The Comprehensive Plan requires that newly annexed residential uses have a median and mean lot size of 7,200 square feet with a maximum density of 3.2 dwelling units per acre. That being said, none of the existing residential zoning districts allow for this specific type of development so every residential annexation is forced to zone to a "PD" – Planned Development District. This newly created zoning district will allow for newly annexed property to be zoned to a "straight" zoning district rather than a negotiated PD District. A "straight" zoning district is what a zoning district which is listed in the Zoning Ordinance with clearly defined space limits and allowed land uses is called.
- Proposed 146-130 Changes (Vehicle Parking): This section is being modified to correspond to changes that are being made to the Schedule of Uses which include, but are not limited to the creation of parking ratios for new uses, modifications in the names of existing uses, and the incorporation of parking standards adopted through approved resolutions. Modifications to some of the

existing minimum parking requirements are intended to bring the ratio into closer conformance with standards that are found throughout the country.

- Proposed 146-131 Changes (Off-Street Loading): This section is being modified in order to create clear processes for which deviations to the existing loading standards could be approved. As proposed, loading space requirements as well as the required location of loading facilities could be modified as part of the Planning and Zoning Commission's approval of a site plan.
- Proposed 146-132 Changes (Fences, Walls, and Screening Requirements): This section is being modified to address typos, remove unnecessary verbiage, clarify existing provisions, modify how bay doors are screened, and to replace the existing variance procedure with a meritorious exception process. The proposed modifications will require loading docks to be screened from adjacent properties and will require bay doors in non-industrial districts to be oriented away from adjacent rights-of-way.

The proposed meritorious exception process will allow the Planning and Zoning Commission to approve modifications to existing screening regulations through the site plan process if a quality development or innovative design is proposed. This process should help reduce the number of attempts to rezone a given property to a "PD" – Planned Development District in order to modify the screening requirements. Allowing for the approval of a meritorious exception, thereby eliminating the need for a rezoning request, will eliminate approximately 2 months from a project's development schedule. Staff has received broad support for the addition of a meritorious exception process to this section from members of the development community.

- Proposed 146-133 Changes (Accessory Buildings and Uses): This section is being modified to clearly indicate that home occupations are allowed in all permitted single family residential structures.
- Proposed 146-134 Changes (Performance Standards): This section is being modified to allow for exceptions for aerial vehicles, utility operations for health care facilities, and noise generated during the performance of public service work.
- Proposed 146-135 Changes (Landscape Requirements): This section is being modified to address which City Official has approval authority over specific provisions, increase residential quality by increasing the number and size of required trees, increase the size of landscape buffers between non-residential uses and residential uses from 10 feet to 20 feet, and to allow for a meritorious exceptions process that is identical to what is proposed in the Section 126-132 referenced above. Allowing for the approval of a meritorious exception, thereby eliminating the need for a rezoning request will eliminate approximately 2 months from a project's development schedule. Staff has received broad support for the

addition of a meritorious exception process to this section from members of the development community.

- Proposed 146-137 Changes (Communications Antennas, Satellite Dishes and Support Structures/Towers): This section is being modified to include the proposed zoning district “RS SM” in the regulations that are applicable to residential districts.
- Proposed 146-139 Changes (Architectural and Site Standards): This section is subject to a large number of modifications that are intended to address longstanding complaints, redundant processes, and residential quality. For many years, Staff has received feedback regarding the complicated nature of the point system prescribed by the existing regulations. The proposed modifications will eliminate the point system and create a system that mandates certain regulations while letting developers pick from a list of other regulations that will apply to their project. This new process utilizes the existing regulations but utilizes them in a different manner that should be easier for members of the development community to digest and comprehend. These types of architectural design requirements have also been added for all single family residential structures. Currently, the existing architectural standards only have provisions for townhomes, whereas the proposed ordinance will have architectural requirements for all single family residential (attached and detached) and duplex residential structures. These standards are drafted in the hope that residential quality will be increased. Several neighboring cities already have architectural regulations pertaining to single family residential design.
- Proposed 146-141 (Residential Development Design Standards): This section is being created in order to ensure that high-quality residential developments are developed within the City. These standards are partly derived from existing provisions within the City’s Comprehensive Plan. These standards will require large residential developments to be broken into smaller neighborhoods (similar to Stonebridge Ranch and Eldorado), to have enhanced entrances, to preserve access to public natural features, and to create open spaces throughout the neighborhood.
- Proposed 146-162 Changes (Administrative Official): This section is being modified to list the Director of Planning as the Zoning Ordinance’s Administrative Official. The Director of Planning is the City Official who administers the Zoning Ordinance on a day-to-day basis. However, the Chief Building Official is currently listed as the Administrative Official.
- Proposed 146-164 Changes (Changes and Amendments): This section is being modified in order to clarify how much a denied rezoning request or amendment must be modified in order to be resubmitted and/or reconsidered within a year. The proposed amendment will give the Director of Planning the discretion to



decide if a request has been substantially modified. The Director's determination may be appealed to the City Council.

- Proposed 146-165 Changes (Board of Adjustment): This section is being modified in order to clarify what types of variances may be considered by the Board and to eliminate a special exception that allows for the waiver or reduction in parking or loading spaces. These parking or loading spaces may now be modified by the proposed meritorious exception process that is being created.
- Proposed Appendix C Changes (Historic District Maps): This section's title is being modified in order to accurately reflect the maps within the appendix. Appendix C does not only contain historic district maps. It also contains the "CC" – Corridor Commercial Overlay District Map.
- Proposed F-1 Changes (Schedule of Yards and Setbacks): This section is being modified in order to consolidate all of the development standards into a single schedule. Currently, this schedule only contains yard and setback requirements while Section F-2 contains height, area, and density requirements. In order to reduce confusion and the number of schedules that must be referenced in order to ascertain all of the development regulations that apply to a given zoning district, Sections F-1 and F-2 of the Zoning Ordinance are being combined.
- Proposed F-2 Changes (Schedule of Heights, Areas, and Densities): This section is being modified in order to consolidate all of the development standards into a single schedule. Currently, this schedule only contains height, area, and density requirements while Section F-1 contains yard and setback requirements. In order to reduce confusion and the number of schedules that must be referenced in order to ascertain all of the development regulations that apply to a given zoning district, Sections F-1 and F-2 of the Zoning Ordinance are being combined.
- Proposed F-4 Changes (Schedule of Uses): This section is subject to a large number of modifications that are meant to streamline and simplify the schedule. This section of the Zoning Ordinance has not been significantly modified since its creation in the 1960's. The current Schedule of Uses is based on a pyramidal zoning scheme in which residential districts allow the fewest uses while industrial districts allow the most uses. The biggest problem with this scheme is that residential uses are allowed in industrial districts, which is not ideal from a land use compatibility standpoint. Ideally, residential uses would only be allowed in residential districts, industrial uses would only be allowed in industrial districts, retail uses would only be allowed in retail districts, and so on.

The proposed amendments attempt to follow this type of ideal zoning scheme while remaining cognizant of existing property rights and land use entitlements. In fact, when the totality of the amendments to this section are considered, more land uses are added as being allowed by right and by approval of a specific use

permit than are actually being removed. Additionally, the numbers of land use categories have been reduced for simplicity. For example, rather than have a land use titled “bait shop” and another use titled “florist shop,” these uses will be referred to as retail. Overall, the proposed amendments to the Schedule of Uses should improve the schedule’s ease of use, should reduce inconsistencies in where certain land uses are allowed, and result in a more ideal land use development pattern.

**OPPOSITION TO OR SUPPORT OF AMENDMENTS:** Staff has received several broad comments in support of the proposed amendments from members of the development community, members of the Planning and Zoning Commission, and members of the City Council. Staff has not received any specific comments in opposition to any of the proposed amendments.

**ATTACHMENTS:**

- Proposed 138-429 Changes (Location of Sexually Oriented Businesses)
- Proposed 142-5 Changes (Approval Required)
- Proposed 142-8 Changes (Variances and Appeals)
- Proposed 142-9 Changes (Definitions)
- Proposed 142-42 (Dormancy and Approval Expirations)
- Proposed 142-73 through 142-79 Changes (General Development Plan, Preliminary-Final Plat, Preliminary-Final Replat, Record Plat, Minor Plat, Minor Replat, Amending Plat)
- Proposed 142-81 Changes (Conveyance Plat)
- Proposed 142-82 (Administratively Complete)
- Proposed 142-99 Changes (Lots)
- Proposed 142-105 Changes (Improvements)
- Proposed 142-106 Changes (Screening and Buffering of Certain Residential Lots Adjacent to Streets)
- Proposed 142-157 Changes (Conveyance of Land Requirements)
- Proposed 146-40 Changes (Nonconforming uses and nonconforming structures)
- Proposed 146-41 Changes (Specific Use Permits)
- Proposed 146-42 Changes (Temporary Uses)
- Proposed 146-44 Changes (Access Management Plan approval)
- Proposed 146-45 Changes (Site Plan Approval)
- Proposed 146-46 Changes (Definitions)
- Proposed 146-67 through 146-71, 146-73 through 146-75, 146-77 Changes (AG, RED-1, RED-2, RS 120, RS 84, RS 60, RS 45, RD 30, RG 25 Districts)
- Proposed 146-78 through 146-81, 146-83 through 146-91, 146-95, 146-96 Changes (RG 18, MF-1, MF-2, MF-3, NC, BN, BG, C, O-1, O, BC, ML, MH, MTC, CHD Districts)
- Proposed 146-102 (RS SM – Single Family Residence District)
- Proposed 146-130 Changes (Vehicle Parking)
- Proposed 146-131 Changes (Off-Street Loading)
- Proposed 146-132 Changes (Fences, Walls, and Screening Requirements)

- Proposed 146-133 Changes (Accessory Buildings and Uses)
- Proposed 146-134 Changes (Performance Standards)
- Proposed 146-135 Changes (Landscape Requirements)
- Proposed 146-137 Changes (Communications Antennas, Satellite Dishes and Support Structures/Towers)
- Proposed 146-139 Changes (Architectural and Site Standards)
- Proposed 146-141 (Residential Development Design Standards)
- Proposed 146-162 Changes (Administrative Official)
- Proposed 146-164 Changes (Changes and Amendments)
- Proposed 146-165 Changes (Board of Adjustment)
- Proposed Appendix C Changes (Historic District Maps)
- Proposed F-1 Changes (Schedule of Yards and Setbacks)
- Proposed F-2 Changes (Schedule of Heights, Areas, and Densities)
- Proposed F-4 Changes (Schedule of Uses)