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Conduct a Public Hearing to Consider/Discuss/Act on a Request by the City of McKinney to Amend Chapter 146 (Zoning Regulations), Section 146-40 (Nonconforming uses and nonconforming structures) of the Code of Ordinances

..Summary

**COUNCIL GOAL:** Operational Excellence  
(2E: Continuously provide a high level of customer service to our citizens)

**MEETING DATE:** April 23, 2019

**DEPARTMENT:** Development Services – Planning Department

**CONTACT:** Jennifer Arnold, AICP, Director of Planning

**APPROVAL PROCESS:** The recommendation of the Planning and Zoning Commission will be forwarded to the City Council for consideration at the May 7, 2019 meeting.

**STAFF RECOMMENDATION:** Staff recommends approval of the proposed amendments.

**ITEM SUMMARY:** On August 21, 2018, the City Council considered and approved amendments to the Zoning Ordinance modifying the allowance of residential uses in commercial zoning districts. However, Staff was recently made aware that some existing homes within the modified zoning districts, which are now considered legally nonconforming or “grandfathered,” have run into issues with closing home sales due to mortgage companies’ unwillingness to issue home loans.

Although these properties are considered legal nonconformities in the eyes of the City, some mortgage companies may refuse to issue loans due to the fact that reconstruction of a legally nonconforming home is not possible if it becomes damaged beyond 50%, under the existing provisions of the Zoning Ordinance.

At the April 2, 2019 City Council Work Session, Staff discussed this concern with the Council and presented several potential options to alleviate the issue. During the discussion, Council reached a consensus and directed Staff to move forward with a modification to Section 146-40 of the Zoning Ordinance related to nonconforming uses and nonconforming structures.

Staff is now presenting the proposed amendment for consideration by the Planning and Zoning Commission. A copy of the April 2 City Council presentation is attached to this Staff Report for your reference.

**BACKGROUND INFORMATION:** On June 4, 2018, Staff presented an item to the City Council highlighting the fact that a number of residential land uses were permitted in non-residential zoning districts – specifically, those zoning districts which existed prior to 2014 (commonly referred to as legacy zoning districts). The impact of this issue could result in the unpredictability of development within commercial zoning districts, the possible erosion of the commercial tax base, and the potential incompatibility caused by allowing some uses next to one another without some additional approval action being required (ex: specific use permits).

Based on the Staff presentation and recommendation, the Council was in general agreement that an amendment to the Zoning Ordinance should be considered. As such, Staff moved forward with an update.

Following public notification and outreach efforts, proposed amendments to the Zoning Ordinance to modify the allowance of residential uses in legacy zoning districts were considered by the Planning and Zoning Commission on August 14, 2018 and received a favorable recommendation. On August 21, 2018, the proposed amendments were considered and approved by the City Council.

#### **PROPOSED AMENDMENTS:**

- Staff proposes the following addition to Section 146-40 (Nonconforming Uses and Nonconforming Structures), to provide for the specific consideration of residential uses in nonresidential zoning districts:

*“(4) Certain Uses and Lots in Nonresidential Zoning Districts Existing on May 7, 2019.*

- a. Subsection (d)(4) shall apply only to certain uses and lots in existence on May 7, 2019.*
  - b. Single-family or two-family residential uses located in nonresidential districts may be improved, maintained, or rebuilt.*
  - c. Single-family or two-family dwellings may be constructed on any vacant lot(s) located within a residential subdivision for which such vacant lot was originally-platted solely for single-family or two-family dwellings.*
  - d. Any limitation on the construction or reconstruction of a single-family or two-family residential use pursuant to subsection (f) of this Section 146-40 shall not apply to single-family or two-family residential uses which meet the criteria in subsections (d)(4)(a) – (d)(4)(c) above.”*
- These new provisions are intended to allow for any existing single-family or two-family residential structure or lot within a neighborhood to continue as legally conforming and without limitation on construction or reconstruction in the event of damage.

**OPPOSITION TO OR SUPPORT OF REQUEST:** Staff has not received any letters of support or opposition to this request.