



**25-2399**

**TITLE:** Consider/Discuss/Act on the Appeal of a Denial of an Exception Application for New Water or Wastewater Utilities by Luxelocker for the Property located at 4097 FM 1461 pursuant to Ordinance No. 2024-12-107 for Properties Located Outside the City's Incorporated Limits but Within the City of McKinney's Extraterritorial Jurisdiction and/or Certificates of Convenience and Necessity Areas

**COUNCIL GOAL:** Operational Excellence  
(2A: Balance available resources to accommodate the growth and maintenance needs of the City)

**MEETING DATE:** January 21, 2024

**DEPARTMENT:** Public Works  
Development Services  
City Attorney

**CONTACT:** Ryan Gillingham, PE, Director of Public Works  
Michael Quint, Executive Director of Development Services  
Mark Houser, City Attorney

**RECOMMENDED CITY COUNCIL ACTION:**

- Staff recommends denial of the appeal.

**ITEM SUMMARY:**

- On June 25, 2024 City Council enacted Ordinance 2024-06-046, which ordinance was subsequently amended and restated on December 17, 2024 by Ordinance 2024-12-107, which provided for a temporary cessation of new water or wastewater utility line connections, approval or issuance of any new water meters, or the creation of any new retail utility service accounts for properties located outside the City's incorporated limits but within the City of McKinney's Extraterritorial Jurisdiction (ETJ) and/or Certificates of Convenience and Necessity (CCN).

- On September 16, 2024, an Exception Application was received for a development known as Luxelocker located at 4097 FM 1461. The proposed development is located within the ETJ and within the City's proposed CCN decertification area for water and wastewater services. The project consists of 92 RV and boat storage condominiums.
- The Exception Application was denied by Staff on September 30, 2024 as the project did not meet the exception requirements of Ordinance 2024-12-107 as an ongoing project. The applicant has filed an appeal of this decision with the City Council in accordance with Section 8 of the Ordinance.
- Staff recommends denial of the appeal as the project does not meet the exception requisites of Ordinance 2024-12-107, as an ongoing project. A decision on this appeal will be considered at a subsequent City Council meeting.

#### **BACKGROUND INFORMATION:**

- McKinney's current Comprehensive Plan was adopted in 2018, and it guides development within McKinney's City limits as well as its ETJ. The City's Water Distribution System Master Plan ("Water Master Plan") and Wastewater Collection System Master Plan ("Wastewater Master Plan") were developed based on the land use assumptions and anticipated densities prescribed by the Comprehensive Plan. Additionally, the City holds water and wastewater Certificates of Convenience and Necessity ("CCN") for areas which generally align with the limits of our ETJ.
- Recent state legislation has created development conditions in McKinney's ETJ which make providing retail water and wastewater service unpredictable from a planning and management standpoint. As a result of these laws, involuntary annexation of properties in the ETJ by the City is no longer available, and property owners now have the authority to remove their property from a City's ETJ without consent or approval of a city.
- As a result of the foregoing, the City of McKinney has petitioned the Public Utility Commission of the State of Texas (PUC) to decertify portions of its current water and wastewater CCNs in Docket No. 56698.
- Without the ability to plan for and regulate densities and land uses, and without the ability to annex properties in the ETJ into the City's corporate limits, the ability to ensure the adequate provision of services in the ETJ is no longer sustainable and doing so poses potential harm to the public health,

safety and welfare of the citizens of McKinney.

- Ordinance 2024-12-107 enacted a temporary cessation period through July 1, 2025, which should afford the PUC sufficient time to rule on the City's CCN decertification petition. Until that time, no new water or wastewater utility line connections, approval or issuance of any new water meters, or the creation of any new retail utility service accounts for properties located outside the City's incorporated limits but within McKinney's ETJ and/or CCN areas are permitted, unless approved through the exception process established by the Ordinance.
- A City's Extraterritorial Jurisdiction (ETJ) is the area outside the incorporated limits but within its ultimate planning area. The City is not authorized by state law to enforce any land use or zoning regulations in the ETJ. Cities may only annex properties within their ETJ.
- A Certificate of Convenience and Necessity (CCN) is a permit issued by the Texas Commission on Environmental Quality (TCEQ) which authorizes and obligates a public utility to provide services to a specified geographic area.
- The Texas Local Government Code Section 552.001 further states, in part:
  - (b) A municipality may purchase, construct, or operate a utility system inside or outside the municipal boundaries and may regulate the system in a manner that protects the interests of the municipality. The municipality may own land inside or outside its boundaries for these purposes.*
  - (c) A municipality may extend the lines of its utility systems outside the municipal boundaries and may sell water, sewer, gas, or electric service to any person outside its boundaries. The municipality may contract with persons outside its boundaries to permit them to connect with those utility systems on terms the municipality considers to be in its best interest. This subsection does not authorize the extension of electric lines into the corporate limits of another municipality.*
- On September 16, 2024, an Exception Application was received for a development called Luxelocker located at 4097 FM 1461. The proposed development consists of 92 RV and boat storage condominiums. The Exception Application for the proposed development located at 4097 FM 1461 requested an exception as an "Ongoing Project" under Ordinance 2024-06-046, now Ordinance 2024-12-107.
- The evidence provided to Staff by the applicant did not meet the requirements for an exception as an Ongoing Project. Specifically, the applicant provided a

utility verification letter, conveyance plat, and TXDOT driveway permit as evidence that Luxelocker was an ongoing project. Ordinance 2024-12-107 states “The temporary cessation enacted by this ordinance does not apply to any project or property which has received any plan or permit approval from the City prior to the effective date of this Ordinance.” The evidence provided by the applicant is not a plan or permit approval from the City. Therefore, the Exception Application was denied by Staff on September 30, 2024.

- The applicant filed an appeal of the Staff’s decision of denial with the City Council in accordance with Section 8 of the Ordinance.
- Staff recommends that the City Council deny this appeal. A motion or resolution in support or denial of this appeal will be considered at a subsequent City Council meeting.

**FINANCIAL SUMMARY:**

- N/A

**BOARD OR COMMISSION RECOMMENDATION:**

- N/A

**SUPPORTING MATERIALS:**

[Presentation](#)