OCA CODE 150004

ORDINANCE NO. 48-829

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2010-00022

Zone change request from TF-3 Two-family Residential ("TF-3") to LC Limited Commercial ("LC") subject to Protective Overlay #244 on properties described as:

All of Lots 49 thru 72 inclusive, Block 8, Sunny-Side Addition to Wichita, Sedgwick County, Kansas.

SUBJECT TO THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #244:

1. Architectural Controls:

A. All buildings within the subject property shall share a uniform architectural character, color and same predominate exterior building material. The building(s) walls shall not utilize metal as a predominate exterior façade material.

2. Landscaping:

A. Landscaped street yards, buffers and parking lot landscaping/screening shall utilize a shared palette of landscape materials and shall be in accordance with the City of Wichita Landscape Ordinance.

B. A landscape plan shall be prepared by a Kansas Landscape Architect for the above referenced landscaping, indicating type, location and specifications for all plant materials.

C. Existing street trees along Lorraine Avenue are to be preserved, supplemented with evergreen screening east of the existing street trees. Evergreens shall be spaced at a rate of one evergreen per 20 feet.

D. If existing trees are not preserved, evergreen screening shall apply to adjoining residential use properties along the west line and the west most 151 feet of the south line at a rate of one evergreen per six feet. When planted, evergreens shall be not less than six feet tall and shall be maintained to provide an opaque living wall.

E. Berms may be utilized to gain additional elevation for the evergreen screening.

F. A landscape buffer of a minimum of 40 feet shall be maintained between Lorraine Street and any parking or traffic circulation areas.

3. Lighting:

A. The parcel shall share similar or consistent parking lot lighting elements (i.e. fixtures, poles, lamps, etc.).

B. All lighting shall be shielded to direct light disbursement in a downward direction and directed away from residential areas.

C. Light poles including the above ground base shall be limited to a maximum height of 22 feet tall and 15 feet tall when located within 200 feet of residential use property.

4. Screening:

A. Rooftop mechanical equipment shall be screened from ground level view with screening materials matching the building roof or wall materials.

B. Trash receptacles, loading docks and loading areas shall be appropriately and individually screened with materials matching or similar to the building(s) façade hiding them from ground view.

C. Berms that are a minimum of three feet higher than the elevation of the top of the Lorraine Street curb topped by a six-foot tall opaque screening fencing shall be utilized along or near the west property line and the western 151 feet along the south line of the subject property. A berm and a fence shall also be installed along the southern property line east of the alley to a point located 20 feet west of the Hillside right-of-way. Opaque fencing may be constructed of a combination of the following materials: masonry, cast or poured concrete, wood, white or natural color PVC vinyl, or similar screening with approval of the Director of Planning.

D. Unless otherwise noted, screening shall be in accordance with the Wichita-Sedgwick County Unified Zoning Code, Section IV and Section III-C.2.b.

5. Setbacks shall be as follows:

A. Minimum Front (Hillside) Setback: 20 feet (east property line), provided that the minimum required front setback may be reduced pursuant to Sec. III-E.2.e(5) of the Wichita-Sedgwick County Unified Zoning Code.

B. Minimum Rear (Lorraine) Setback: 23 feet (west property line) from Lorraine to parking or traffic circulations and 73 feet to the building.

C. Minimum Interior Side Setback: Zero feet, but if an interior side setback is provided it shall be at least five feet in width. The west most 151 feet of the south property line shall be 25 feet.

D. Minimum Street Side (Orme) Setback: 10 feet (north property line).

6. Building Height: Up to 35 feet.

7. Building size shall be limited to that of the Neighborhood Retail zoning district: no individual use may exceed 8,000 square feet of floor area.

8. Uses shall be limited to the following LC Limited Commercial ("LC") zoning district uses:

A. Single-family, Duplex, Multi-family, Assisted Living, Day Care Limited, Day Care General, Government Service, Safety Service, Animal Care Limited, Automated Teller Machine, Bank or Financial Institution, Convenience Store, Funeral Home, Medical Services, Monument Sales, Nurseries and Garden Centers, Office General, Personal Care Service, Personal Improvement Service, Post Office Substation, Printing and Copying Limited, Restaurant and Retail General (except the following retail general uses are prohibited: liquor store, entertainment establishment, pawnshop, businesses that accept vehicle titles or other property as security for loans, drive through service).

B. No drive though lanes are allowed.

9. Complete access control is granted along Lorraine Avenue. A locked gate shall be installed at the end of the alley.

10. Signage shall be per the sign code except that there shall not be any ground or pole signage on the Lorraine frontage nor shall there be any building signage facing west.

11. Trash pickup is permitted only between the hours of 7:00 a.m. and 9:00 p.m.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 21 **day of** September, **2010.**

ATTEST:

Karen Sublett, MMC

Karen Sublett, City Clerk

Carl Brewer, Mayor

(SEAL)

Approved as to form:

Gary E. Rebenstorf

Gary E. Rebenstorf, Director of Law

Agenda Item No. _____

City of Wichita
City Council Meeting
September 14, 2010

TO: Mayor and City Council

SUBJECT: ZON2010-00022 – City zone change from TF-3 Two-family Residential ("TF-3") to Limited Commercial ("LC") subject to Protective Overlay #244; generally located southwest of the intersection of Orme and Hillside. (District I)

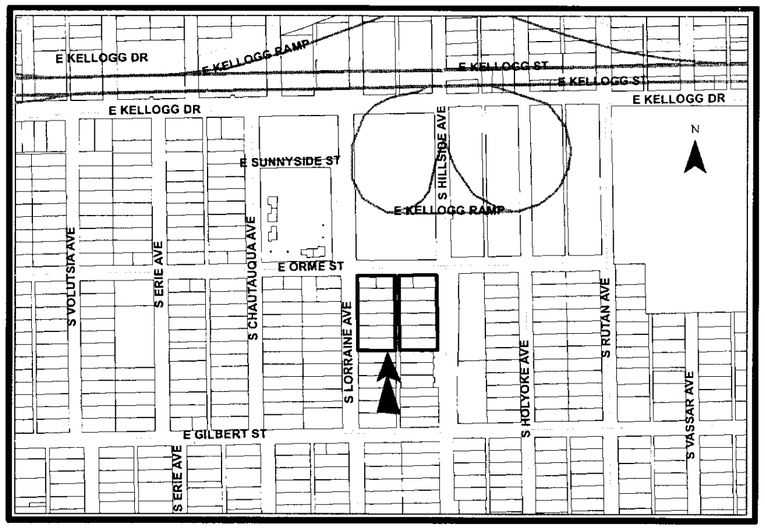
INITIATED BY: Metropolitan Area Planning Department JLS

AGENDA: Planning (Non-Consent)

DAB Recommendation: Deny (vote unanimous).

MAPC Recommendation: Approve (vote 7-5).

MAPD Staff Recommendation: Deny.



Background: The applicants are requesting LC Limited Commercial ("LC") zoning subject to a Protective Overlay ("PO") on approximately 2.09 acres located at the southwest corner of Orme Street and Hillside Avenue. The site is currently zoned TF-3 Two-family Residential ("TF-3"), is platted into 26 lots, Lots 49-72, Block 8, Sunny-Side Addition, that are owned by 11 different owners. The lots are developed with single-family residences built between 1920 and 1940. The subject property has 300 feet of frontage on Hillside Avenue and on Lorraine Avenue and approximately 324 feet (including the 20-foot alley) of frontage on Orme. A 16-foot wide alley runs south from Orme through the center of the application area and beyond to Gilbert Street, located one block south of Orme. (To incorporate the alley into the project, either a replat or a vacation is required. An appropriate terminus to the alley would be decided as part of either of those two actions.)

The applicants' proposed PO was subsequently modified by the Metropolitan Area Planning Commission ("MAPC"), and the applicant has agreed to the modifications. The modified PO is detailed in the "analysis" section below.

Due to the length of the site's frontage, zoning code compatibility standards trigger a 25-foot setback along the rear- and side yard where zoning more intense than TF-3 is located contiguous to, or across the street from, TF-3 or SF-5, Single-family Residential ("SF-5") zoning, unless separated by a freeway or expressway.

Nearby properties are zoned General Office ("GO"), TF-3 and un-zoned right-of-way. The properties located to the west, across Lorraine, and the contiguous western half-block located to the south are zoned TF-3 and are developed with single-family residences. Land contiguous to the eastern half-block located south of the subject site is zoned GO and is developed with office uses, as is the property located east across Hillside. Land to the north of Orme is un-zoned right-of-way and is part of the Hillside-U.S. 400 interchange. There is also a church located southwest of the site, across Lorraine.

In general, homes in the application area are older, but well maintained residences. The two blocks facing Lorraine, south of Orme, are tree lined and have the quintessential feel of a typical neighborhood of the 1920s, 1930s and 1940s. The Hillside portion of the application area has less of a neighborhood feel than the Lorraine side.

Prior to 1992, the land use policy for this segment of Hillside was to look favorably on office zoning for the lots that have frontage on Hillside. In looking at the development that has occurred between the three lots located immediately south of the application area north to Central, there are a significant number of lots that front Hillside that have been rezoned to GO and developed with medical related uses, creating a significant medical corridor anchored on the north by Wesley (northeast corner of Central and Hillside) and on the south by Via Christi-St. Joseph (east of Hillside, north of Harry) medical centers.

Analysis: At the District Advisory Board ("DAB") I meeting held on August 2, 2010, the DAB voted unanimously to recommend denial of the request for LC zoning with the recommended Protective Overlay ("PO"). Among the concerns expressed were: increased traffic volumes generated by a commercial use and the potential for additional accidents; traffic cutting through private parking lots due to the median in Hillside; potential loss of value to remaining homes and the potential for increased crime that can be associated with 24-hour/seven-day-a-week operations.

At the Metropolitan Area Planning Commission ("MAPC") meeting held August 5, 2010, speakers made comments similar to those made at the DAB meeting. The MAPC voted to recommend approval (7-5) of the request for LC zoning subject to the following modified Protective Overlay ("PO") #244 (see 2.E, 2.F, 4.C, 5.B, 10 and 11):

1. Architectural Controls:

A. All buildings within the subject property shall share a uniform architectural character, color and same predominate exterior building material. The building(s) walls shall not utilize metal as a predominate exterior façade material.

2. Landscaping:

A. Landscaped street yards, buffers and parking lot landscaping/screening shall utilize a shared palette of landscape materials and shall be in accordance with the City of Wichita Landscape Ordinance.

B. A landscape plan shall be prepared by a Kansas Landscape Architect for the above referenced landscaping, indicating type, location and specifications for all plant materials.

C. Existing street trees along Lorraine Avenue are to be preserved, supplemented with evergreen screening east of the existing street trees. Evergreens shall be spaced at a rate of one evergreen per 20 feet.

D. If existing trees are not preserved, evergreen screening shall apply to adjoining residential use properties along the west line and the west most 151 feet of the south line at a rate of one evergreen per six feet. When planted, evergreens shall be not less than six feet tall and shall be maintained to provide an opaque living wall.

E. Berms may be utilized to gain additional elevation for the evergreen screening. See 4.C below for berm requirements.

F. A landscape buffer of a minimum of 40 feet shall be maintained between Lorraine Street and any parking or traffic circulation areas.

3. Lighting:

A. The parcel shall share similar or consistent parking lot lighting elements (i.e. fixtures, poles, lamps, etc.).

B. All lighting shall be shielded to direct light disbursement in a downward direction and directed away from residential areas.

C. Light poles including the above ground base shall be limited to a maximum height of 22 feet tall and 15 feet tall when located within 200 feet of residential use property.

4. Screening:

A. Rooftop mechanical equipment shall be screened from ground level view with screening materials matching the building roof or wall materials.

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D. Unless otherwise noted, screening shall be in accordance with the Wichita-Sedgwick County Unified Zoning Code, Section IV and Section III-C.2.b.

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D. Minimum Street Side (Orme) Setback: 10 feet (north property line).

6. Building Height: Up to 35 feet.

7. Building size shall be limited to that of the Neighborhood Retail zoning district: no individual use may exceed 8,000 square feet of floor area.

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B. No drive though lanes are allowed.

9. Complete access control is granted along Lorraine Avenue.

10. Signage shall be per the sign code except: there shall not be any ground or pole signage on the Lorraine or Orme frontages; there shall not be any building signage facing west; and only one monument sign is permitted on Hillside.

11. Trash pickup is permitted only between the hours of 7:00 a.m. and 9:00 p.m.

(In item number eight, some of the applicant's prohibited uses would have been allowed by-right as part of the "retail, general" category, so the prohibited uses have been listed individually to clarify that they are specifically prohibited. The applicant's other prohibited uses that have not been individually listed, such as bars, taverns, drinking establishments, nightclubs, etc., either are distinct uses listed separately from the "retail, general" category by the Unified Zoning Code or they require additional action such as conditional use approval; therefore they would not be allowed since they are not included in the list of permitted uses.)

At the end of the two-week protest period, 49.69 percent of the total land area within the protest area submitted valid protests against the requested zoning. Since the total land area protesting the case equals 20% or more, then it takes a 3/4 majority vote (six out of seven) of the Council to overturn the protest, and a 2/3 majority vote (five out of six) is required to overturn or modify the MAPC's recommended action.

Financial Considerations: None.

Goal Impact: Promote Economic Vitality

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC, approve the zone change subject to Protective Overlay #244 and place the ordinance on first reading (requires a three-fourths majority vote); or
2. Deny the request (requires a two-thirds vote) or
3. Return the request to the MAPC for further consideration (requires a simple majority vote).