

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. ZON2013-00038 (associated with CON2013-00036)

Zone change request from LI Limited Industrial and LC Limited Commercial, subject to the DO Delano Neighborhood Overlay District, to CBD Central Business District, subject to the DO Delano Neighborhood Overlay District, on property containing approximately 1.38 acres generally located north of West Douglas Avenue, east of North Handley Street, south of West Pearl Street and west of North Osage Street, addressed variously as 826, 822 and 818 West Douglas Avenue; 115 and 149 North Osage Street and 120 North Handley Street, and described as:

Lots 31, 33, 35, 37 and 39 on Osage Avenue together with the East half of vacated alley adjoining said lots on the West together with the South 20 feet of vacated Pearl St adjoining said Lot 39 on the North; AND lots 32, 34, 36, 38 and 40 on Wichita Street now Handley Avenue, together with the West half of vacated alley adjoining said Lots on the East, together with the South 20 feet of vacated Pearl Street adjoining lot 40 on the North; AND Lots 41, 43, 45, 47 and 49 Chicago Avenue now Douglas Avenue, together with a 10 foot strip of vacated land adjoining lot 41 on the West, all in West Wichita Addition to the City of Wichita, Sedgwick County, Kansas.

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.

City of Wichita  
City Council Meeting  
February 11, 2014

**TO:** Mayor and City Council

**SUBJECT:** ZON2013-00038 and CON2013-00036 – Zone change request from LI Limited Industrial and LC Limited Commercial, subject to the DO Delano Neighborhood Overlay District, to CBD Central Business District, subject to the DO Delano Neighborhood Overlay District, and a Conditional Use to permit a “nightclub in the city” on property generally located north of West Douglas Avenue, east of North Handley Street, south of West Pearl Street and west of North Osage Street, addressed variously as 826, 822 and 818 West Douglas Avenue; 115 and 149 North Osage Street and 120 North Handley Street (District VI)

**INITIATED BY:** Metropolitan Area Planning Department *JLS*

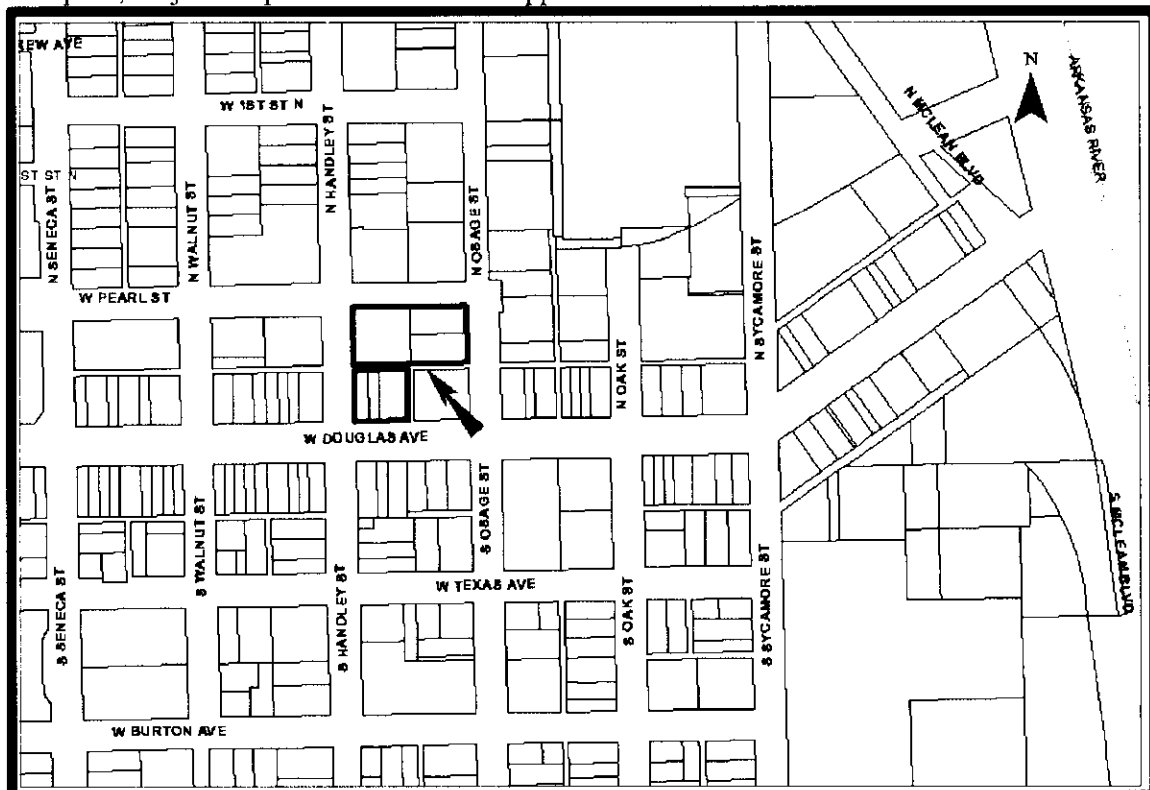
**AGENDA:** Planning (Consent)

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**MAPC Recommendation:** The MAPC recommended approval of the request subject to staff recommendations (11-0-1) on January 9, 2014.

**DAB Recommendation:** District Advisory Board VI unanimously recommended approval of the request (5-0).

**MAPD Staff Recommendation:** Metropolitan Area Planning Department staff recommended approval of the request, subject to specific conditions of approval.



**Background:** The applicant is seeking to rezone to the CBD Central Business District (CBD) 1.38 platted acres that are currently zoned LI Limited Industrial (LI) (115, 117 and 149 North Osage and 120 North Handley) and LC Limited Commercial (LC) (818, 822, 822-1/2 and 826 West Douglas), subject to the D-O Delano Neighborhood Overlay District (D-O). The applicant is also seeking Conditional Use approval for a “nightclub in the city” on the same properties included in the rezoning request.

The application area is located northeast of the intersection of West Douglas Avenue and North Handley Street and covers three-fourths of the block on which it is located. The property is developed with two sets of commercial buildings and a parking lot. The first set of commercial buildings front West Douglas Avenue, just east of North Handley Street, and are zoned LC. The buildings fronting West Douglas Avenue are separated from the rest of the application area by an east-west alley that runs from North Osage Street to North Handley Street. Another alley runs north-south to the previously noted east-west alley along the eastern property line of the application area that fronts West Douglas Avenue. A second set of commercial buildings, zoned LI, are located in the northeast-quarter of the block; these building front North Osage Street. Located west of the previously mentioned buildings, on the northwest corner of the application area, is a parking lot that is zoned LI, fronts North Handley Street and provides off-street parking for the two sets of commercial buildings contained in the application area.

The applicant operates a business named “All Things Barbecue” from the commercial buildings that front West Douglas Avenue. All Things Barbecue is an establishment that offers for sale items used in competition barbecuing. The applicant has identified an approximately 34-foot by 66-foot outdoor area (2,244 square feet) that fronts Douglas Avenue, just west of the north-south alley, that is currently zoned LC that is proposed to be used to store and display outdoors barbecue grills and to hold promotional activities for goods offered for sale. The LC zoning district has significant limits on the outdoor display and outdoor storage of merchandise available for sale within an LC zoned building.

In part, Article III, Section III-B.14.e of the Wichita-Sedgwick County Unified Zoning Code (UZC) reads as follows: the outdoor display of merchandise that is for sale within a building may be displayed in areas immediately contiguous to and within ten feet of the building, subject to certain standards: (a) no portion of the display area shall be on publicly owned property without a minor street permit; (b) no required off-street parking space or loading space shall be utilized for display; (c) no food or drink shall be displayed outside the building except in accordance with standards and prior written approval of Environmental Services; (d) the outdoor display of motor vehicles, rental trailers, rental equipment, used furniture, used appliances, used plumbing, used housewares, used building materials or similar items, except as may be otherwise authorized by this Code.

Article III, Section III-B.14.e(3) of the UZC deals with outdoor storage and reads in part, storage of merchandise available for sale shall be allowed outside of an enclosed building in the LC district only as an accessory use and only in compliance with the following standards: (a) the area used for outdoor storage shall be enclosed by a fence or screening wall not less than six feet in height nor less than the height of the merchandise to be screened and (b) the enclosure around the storage area shall be attached to the main building, and the area within such enclosure shall not exceed 10 percent of the floor area occupied by the principal uses within the building. The area within the enclosure shall comply with the same building setbacks as are required for the main building and shall be used in the area calculation used to determine parking requirements.

The CBD zoning district does not have the display and storage restrictions described above. The applicant’s proposal to use the 34- by 66-foot area described above for outdoor activities exceeds the LC district limitations described above; therefore, the applicant is requesting CBD zoning.

The application area is located within the D-O Delano Neighborhood Overlay District (D-O); however, the uses proposed by the applicant are not regulated by the D-O district except that building demolition, construction or alterations (as well as certain other appurtenances) require review for compliance with the Delano Neighborhood Design Guidelines and approval by the Delano Neighborhood Design Review Committee. The requested zone change and the proposed improvements that have triggered the application now under consideration have been reviewed and approved (5-0) by the Delano Neighborhood Design Review Committee (December 13, 2013, HPC2013-00104).

Another part of the applicant's business model is to have the service of food, alcohol and/or live entertainment at promotional events held on-site. The service of alcohol with live entertainment within 300 feet of a place of worship, church, school, residential zoning or a public park is categorized by the UZC as a "nightclub in the city" use, requiring Conditional Use approval. B Multi-family Residential zoning is located 295 feet to the northwest and there is a place of worship, the Potter's House, located approximately 260 feet to the east; therefore, the applicant is requesting Conditional Use approval for a "nightclub in the city."

Land located immediately north of the application is unimproved right-of-way. Property north of the unimproved right-of-way is zoned LI and developed with warehouse and office uses. Property located to the east is also zoned LI and developed with warehouse and office uses. Land to the south is zoned LI, General Commercial (GC) and LC, and is developed with a bank, office and retail sales uses. Land to the west is zoned GC and LI and is developed with retail sales, office and warehouse uses. There is CBD zoning located one-half block east of North Osage Street. An MAPD parking study of West Douglas Avenue between Sycamore Street and Seneca Street reveals that most of the businesses fronting West Douglas Avenue between Sycamore Street and Seneca Street do not provide the current code required number of off-street parking spaces. The planning department analysis estimates that 5,373 off-street spaces are required; an estimated 3,989 have been provided.

On January 6, 2014, District Advisory Board (DAB) VI (5-0) unanimously approved the request, subject to staff recommendations. There were two nearby property owners present who had questions about the specific location of the proposed nightclub. When they heard the applicant's explanation and reviewed the recommended conditions of approval the two citizens indicated they did not object to the application.

On January 9, 2014, the Metropolitan Area Planning Commission (MAPC) unanimously approved (11-0-1) the request, subject to staff recommended conditions of approval:

- (1) The Conditional Use permits a "nightclub in the city" only as an accessory and subordinate use to another non-night club principal use on the platted lots fronting West Douglas Avenue, currently addressed as 818, 822, 822-1/2 and 826 West Douglas Avenue. The parking lot located north of the lots that front Douglas shall be allowed to provide parking for the accessory nightclub in the city. The site shall be developed, operated and maintained in compliance with the approved site plan, and applicable ordinances, codes, regulations and/or licenses, including but not limited to, zoning, building, fire, noise and health.
- (2) No outside loudspeakers are permitted.
- (3) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

There were not any citizens present at the MAPC meeting to address the application. There were not any protests filed during the protest period. The request may be approved by a simple majority vote.

**Financial Considerations:** Approval of this request will not create any financial obligations for the City.

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

**Recommendation/Actions:** It is recommended that the City Council adopt the findings of the MAPC and approve the requested zone change and conditional use, subject to the recommended conditions of approval (simple majority vote required); authorize the Mayor to sign the ordinance and resolution and place the ordinance on first reading.

**Attachments:** Elevation rendering, site plan, elevation plan, MAPC minutes, ordinance and resolution.