

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: February 10, 2015		DATE SUBMITTED: January 30, 2015	
DEPARTMENT OF ORIGIN: CMO		SUBMITTED BY: Joey Dunn	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input checked="" type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Receipt of a recommendation from the Planning & Zoning Commission regarding proposed amendments to Chapter 130 of the Zoning Ordinance concerning the appeal process, notification requirements and administrative procedures for conditional use permits, and changes and amendments to the Zoning Ordinance.			
SUMMARY STATEMENT: On August 12, 2014, the City Council considered an agenda item with proposed changes to Chapter 130 of the Bryan Code of Ordinances with wording as follows:			
<ol style="list-style-type: none"> 1. Change Section 130-33, Conditional use permits to add an appeal process to the city council that requires a 3/4 vote of the 7 council members. The notification shall require a mailed, using the US Postal Service, written notice at least 8.5 by 11 inches in size, folded in a standard envelope, to property owners within 500 feet of the subject property before any action relative to a conditional use permit and 30 days or more prior to the scheduled Bryan government or committee hearing; and, 2. Change Section 130-42, Changes and amendments to zoning ordinance, districts and administrative procedures to add an appeal process to the city council that requires a 3/4 vote of the 7 council members. The notification shall require a mailed, using the US Postal Service, written notice at least 8.5 by 11 inches in size, folded in a standard envelope, to property owners within 500 feet of the subject property before any action relative to a conditional use permit and 30 days or more prior to the scheduled Bryan government or committee hearing. Following discussion, the City Council approved a motion to refer the subject matter to the Planning & Zoning Commission for a recommendation, stating that the referral to the Commission should not carry an implied desired outcome. 			
Council directed staff to have the Planning and Zoning Commission review the proposed change and make a recommendation to council.			
At the September 18, 2014, workshop meeting of the Planning & Zoning Commission, the Commission appointed a subcommittee comprised of three Commissioners (Kevin Krolczyk, Bobby Gutierrez, and Nancy Hardeman) to study the subject matter of the proposed changes and bring information back to the whole Commission. The subcommittee met on November 6, 2014 (please refer to attached summary of discussion points from the November 6, 2014 subcommittee meeting).			
The subcommittee presented an overview of its discussion to the full Commission during the Planning and Zoning Commission Workshop Meeting of November 20, 2014. The Commission provided direction to schedule the items for a formal recommendation at the Regular Planning & Zoning Commission meeting on December 4, 2014. On December 4, 2014, the Commission voted to recommend no changes to the ordinances.			

STAFF ANALYSIS AND RECOMMENDATION: The proposed changes were provided to the Planning & Zoning Commission, the Commission designated a subcommittee to review the proposed changes, and ultimately the Planning & Zoning Commission voted to recommend no changes to the ordinances.

OPTIONS (In Suggested Order of Staff Preference):

1. Receive recommendation.
2. Provide further direction to staff.

ATTACHMENTS:

1. Excerpt from City Council Minutes of August 12, 2014
2. Excerpt from Planning & Zoning Commission Workshop Meeting Minutes of September 18, 2014
3. Excerpt from Planning & Zoning Commission Workshop Meeting Minutes of November 20, 2014
4. Excerpt of Planning & Zoning Commission Regular Meeting Minutes for December 4, 2014
5. Overview of Planning & Zoning Commission Subcommittee Discussion of November 6, 2014

FUNDING SOURCE: This item does not involve funding.

APPROVALS: Hugh R. Walker, 02/02/2015

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 02-02-2015

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 02-02-2015

Revised 05/2013

EXCERPT FROM CITY COUNCIL REGULAR MEETING MINUTES OF AUGUST 12, 2014:

c. Consideration – Bryan Code of Ordinances Section 130 Zoning Changes

Councilmember Peña moved to direct the City staff to make the following changes to the ordinances indicated and bring the changes back to the City Council by the last meeting in September 2014 for a vote: 1) Change Section 130-33, Conditional Use Permits, to add an appeal process to the City Council that requires a three-quarters (3/4) vote of the seven Councilmembers. The notification shall require a mailed, using the U.S. Postal Service, written notice at least 8.5 by 11 inches in size, folded in a standard envelope, to property owners within 500 feet of the subject property before any action relative to a conditional use permit and 30 days or more prior to the scheduled Bryan government or committee hearing; and 2) Change Section 130-42, Changes and Amendments to Zoning Ordinance, Districts and Administrative Procedures, to add an appeal process to the City Council that requires a three-quarters (3/4) vote of the seven Councilmembers. The notification shall require a mailed, using the U.S. Postal Service, written notice at least 8.5 by 11 inches in size, folded in a standard envelope, to property owners within 500 feet of the subject property before any action relative to a conditional use permit and 30 days or more prior to the scheduled Bryan government or committee hearing. The motion was seconded by Councilmember Saenz. The City Attorney pointed out that per the Bryan Code of Ordinances, proposed amendments to the zoning ordinance had to be considered by the Planning and Zoning Commission before coming to the Council for a vote. She also pointed out that item 2 had wording problems and was inconsistent. Councilmember Peña rescinded his motion and then made a motion to refer the subject matter to the Planning and Zoning Commission for a recommendation. The motion was seconded by Councilmember Saenz. It was stated the referral to the Commission should not carry an implied desired outcome. The motion carried with four yeses, one no (Councilmember Konderla) and two absent.

**EXCERPT FROM PLANNING AND ZONING COMMISSION WORKSHOP MEETING
MINUTES OF SEPTEMBER 18, 2014:**

- 5. STAFF PRESENTATION, DISCUSSION, AND POSSIBLE DIRECTION TO STAFF CONCERNING POSSIBLE CHANGES TO THE ZONING ORDINANCE CONCERNING APPEALS OF CONDITIONAL USE PERMITS AND AMENDMENTS TO THE ZONING ORDINANCE, DISTRICT, AND ADMINSTRATIVE PROCEDURES.**

Mr. Zimmermann provided background information. This item was referred to the Commission by the City Council. By consensus, Commissioners agreed to form a subcommittee for further study. Commissioners Krolczyk, Gutierrez, and Hardeman were appointed to the subcommittee.

**EXCERPT FROM PLANNING AND ZONING COMMISSION WORKSHOP MEETING
MINUTES OF NOVEMBER 20, 2014:**

- 5. PLANNING AND ZONING COMMISSION SUBCOMMITTEE PRESENTATION, DISCUSSION AND POSSIBLE DIRECTION TO STAFF CONCERNING POSSIBLE CHANGES TO BRYAN CODE OF ORDINANCES CHAPTER 130, ZONING, REGARDING NOTIFICATION AND APPEALS PROCESSES FOR CONDITIONAL USE PERMITS AS WELL AS CHANGES AND AMENDMENTS TO ZONING ORDINANCE, DISTRICTS AND ADMINISTRATIVE PROCEDURES.**

Mr. Zimmermann distributed an overview of the P&Z subcommittee discussion regarding these proposed ordinance amendments that had been referred to the Commission by the City Council during its regular meeting on August 12, 2014. Subcommittee members Hardeman, Gutierrez and Krolczyk presented their observations and consensus that the proposals should be rejected. There were no objections to scheduling both proposed ordinance amendments for a formal recommendation to the City Council during the Commission's next regular meeting on December 4, 2014.

EXCERPT FROM PLANNING AND ZONING COMMISSION REGULAR MEETING
MINUTES OF DECEMBER 4, 2014:

**9. PROPOSED AMENDMENTS TO THE TEXT OF BRYAN'S CODE OF ORDINANCES
CHAPTER 130 (ZONING) – A PUBLIC HEARING WILL BE HELD FOR EACH ITEM
(Commission makes recommendation; City Council has final approval).**

a. Conditional Use Permits

A recommendation to the Bryan City Council regarding an amendment to the text of Bryan Code of Ordinances Chapter 130, Zoning, changing Section 130-33, Conditional Use Permits, to add an appeal process to the City Council that requires a 3/4 vote of the 7 council members. The notification shall require a mailed, using the US Postal Service, written notice at least 8.5 by 11 inches in size, folded in a standard envelope, to property owners within 500 feet of the subject property before any action relative to a conditional use permit and 30 days or more prior to the scheduled Bryan government or committee hearing. (M. Zimmermann)

Mr. Zimmermann presented the commission with an overview of the proposed amendments to the Conditional Use Permit section of the Bryan Code of Ordinances Chapter 130.

Commissioner Beckendorf moved to recommend denial of amending the text of Bryan's Code of Ordinances, Chapter 130 pertaining to Conditional Use Permits. Commissioner Gutierrez seconded the motion.

Commissioners expressed their support for the findings of the subcommittee that studied the proposals and that there appear to be no reasons to make the proposed amendments a valid suggestion.

The motion passed unanimously.

b. Changes and Amendments to Zoning Ordinance, Districts and Administrative Procedures

A recommendation to the Bryan City Council regarding an amendment to the text of Bryan Code of Ordinances Chapter 130, Zoning, changing Section 130-42, Changes and Amendments to Zoning Ordinance, Districts and Administrative Procedures, to add an appeal process to the City Council that requires a 3/4 vote of the 7 council members. The notification shall require a mailed, using the US Postal Service, written notice at least 8.5 by 11 inches in size, folded in a standard envelope, to property owners within 500 feet of the subject property before any action relative to a conditional use permit and 30 days or more prior to the scheduled Bryan government or committee hearing. (M. Zimmermann)

Discussion regarding this topic was merged with agenda item 9.a. and discussed in tandem.

Commissioner Beckendorf moved to recommend denial of amending the Bryan's Code of Ordinances, Chapter 130 pertaining to changes and amendments to zoning ordinance, districts and administrative procedures. Commissioner Gutierrez seconded the motion.

The motion passed unanimously.

OVERVIEW OF PLANNING AND ZONING COMMISSION SUBCOMMITTEE DISCUSSION OF NOVEMBER 6, 2014:

The following summarizes the Planning and Zoning Commission's subcommittee discussion regarding the proposed text amendments. This summary was distributed to the full Commission before its workshop meeting on November 20, 2014 and its regular meeting on December 4, 2014.

In General

1. Citizen awareness and participation in the development process is desirable and should be encouraged.
2. The proposed changes, if approved, would add time and cost to the development process that may discourage potential investors from developing in Bryan.
3. The proposed changes seem regressive, not progressive, and could slow down development in Bryan by adding at least 4-6 weeks to get approval for a development proposal.

Conditional Use Permits (130-33)

1. There already is a proven democratic process for CUP appeals in Section 130-33(f); applicants can appeal denials or conditions and owners within 200 feet can appeal approvals.
2. The proposed change to Section 130-33 does not address who has standing to appeal. If any citizen has standing to appeal a CUP, then it is likely that many (if not all) CUP requests would have to be considered by the City Council.

Zoning Ordinance amendments/rezonings (130-42)

1. All changes and amendments to the zoning ordinance already require Council consideration as described in Section 130-42(i). Section 130-42 also provides for protests for zoning changes. Section 130-42 does not speak to Conditional Use Permits as referred to in the agenda item description.
2. The proposed change to Section 130-42 is unclear on what sort of appeals process is proposed. Items recommended for approval by the P&Z are automatically forwarded; items recommended to be denied will only be forwarded to Council if the applicant so requests. It is unclear who would have standing to appeal.
3. 200-foot notification areas and requiring a supermajority vote for protested rezonings are requirements that come from State law (Texas Local Government Code Chapter 211).

Both proposals

1. Requiring supermajority approval for every CUP appeal/change to the zoning ordinance would:
 - a. put applicants at a disadvantage and erode majority rule.
 - b. slow down development in Bryan.

- c. require 6 of 7 the Councilmembers to agree on an item (not just those present and voting).
2. 23 regular Council meeting were held between 11/12/13 and 10/28/14 (see attachment); during more than half (12) of those meetings, less than the full Council was present; during 5 of those 12 meetings, only 5 Council members were present, which means that an appeal requiring a supermajority vote could not have been considered at those meetings and thereby further delaying a final decision on a development proposal.
 3. Increasing the notification area to 500 feet will increase the cost for mailings for each item.
 4. The current system of postcard notifications, where property owner information is uploaded and postcards created electronically appears to be a less time-consuming use of staff time. Requiring letter notifications will increase the staff time (and cost) spent on preparing envelope labels, printing notifications and maps, and stuffing envelopes, as well as supply cost.
 5. There is no evidence that letters would reach a wider audience and encourage more citizen participation and awareness of a proposal than a postcard would.

Conclusion

The subcommittee’s consensus is that the proposals should be rejected.

City Council Meeting Attendance 11/12/13 - 10/28/14

Meeting Date	Present	Absent	Supermajority Possible?	Unanimous Consent Required?
11/12/2013	7	0	Yes	No
11/18/2013	6	1	Yes	Yes
12/10/2014	7	0	Yes	No
1/14/2014	7	0	Yes	No
2/3/2014	6	1	Yes	Yes
2/25/2014	7	0	Yes	No
3/25/2014	7	0	Yes	No
4/8/2014	6	1	Yes	Yes
4/22/2014	6	1	Yes	Yes
5/13/2014	6	1	Yes	Yes
5/27/2014	7	0	Yes	No
6/24/2014	5	2	No	N/A
7/8/2014	7	0	Yes	No
8/7/2014	6	1	Yes	Yes
8/12/2014	5	2	No	N/A
8/26/2014	7	0	Yes	No
9/2/2014	7	0	Yes	No
9/9/2014	7	0	Yes	No
9/16/2014	5	2	No	N/A
9/23/2014	5	2	No	N/A
10/14/2014	7	0	Yes	N
10/20/2014	6	1	Yes	Yes
10/28/2014	5	2	No	N/A