

MEMORANDUM

To: Mayor and Council
From: **Community Development Staff**
Date: October 14, 2013
Subject: Zoning/Land Development Code Rewrite

EXECUTIVE SUMMARY

At two Special Called Meetings held on August 5, 2013 and September 17, 2013, Mayor and Council reviewed the amendments to City Code Chapter 27, Zoning, and Chapter 16, Land Development, for a first read. Members of the Council discussed the drafts sequentially – providing input on all topics raised from Community Council, Planning Commission, and Staff, as well as additional topics deemed applicable and needing further discussion. The end result was identification of the sections City Council would like to amend from the original draft transmittal and ultimately voted upon at the Second Read.

After holding the Public Hearing and gathering public comments, Council shall vote on whether to approve, defer, or deny the transmitted draft with all proposed revisions. Below is a list of sections contemplated for said vote and includes the changes made in the draft based on the Mayor and Council's discussion points and those provisions amended from the transmitted draft as a result of successive staff examination. All are manifest in the marked-up and clean drafts (dated October 3, 2013) distributed in this packet. Applicable page numbers refer to the marked-up copy.

1. Application Filing (Appeals of Administrative Decisions) (Section 16-3.80-C)

What We Heard	PC Action Taken	MC Discussion
Application deadlines need to be consistent across the entire spectrum of regulations.	Motioned to change the appeal deadline to 30 days in Section 16-3.80-C. The motion was voted and passed (5 - 0).	Council indicated agreement with PC action with the addition of several sections related to public noticing. See p. 3-7 of the Oct. 3 draft land development regulations and pp. 21-2, 22-2, 23-2, 24-1 of the Oct. 3 draft zoning ordinance.

Section 16-3.80-C. Application Filing

Unless otherwise expressly stated, appeals must be filed with the community development director within 30 days of the date of the order, requirement or decision being appealed. Failure to act is not an order, requirement or decision within the meaning of this section. The appeal must be scheduled to be heard at the next regularly scheduled zoning board of appeals meeting for which required hearing notice can be provided, unless the applicant agrees to a later hearing date.

2. Exemptions (Stream Buffers) (Section 16-8.40-B)

What We Heard	PC Action Taken	MC Discussion
Homeowners should be allowed to build or replace structures in the City stream buffer with the minimum amount of land disturbance activity needed.	Motioned to amend Section 16-8.40-A to allow limited land disturbance to build or rebuild decks, porches, and accessory uses up to the 25 foot state stream buffer. The motion was voted and passed (4 - 1). Bob Dallas dissented.	Council indicated agreement with PC action; however, this might not meet the minimum requirement from MNGWPD. Council decided to allow construction with minimal land disturbance located 50 feet or more from the stream. See pp. 6-2 and 6-3 of the Oct. 3 land development regulations.

16-6.40-B. Special Administrative Permits

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6. Repair and reconstruction of existing structures located more than 50 feet from the stream, provided that the repair or reconstruction does not result in additional impervious cover and that riparian vegetation is restored or replaced in any areas of resulting land disturbance.

3. Section 16-7.30-D. Drainage Outfalls

The drainage system from a proposed development must discharge into an outfall that has adequate capacity to accommodate the runoff from the development. If the connecting downstream system is not able to accommodate the allowable design flow from the site, then the design engineer must design on-site drainage facilities that result in no exacerbation of existing downstream conditions. See p. 7-9 of the Oct. 3 land development regulations.

4. Tree Removal (Section 16-8.50-D)

What We Heard	CC Action Taken	PC Action Taken	MC Discussion
Homeowners should be allowed to remove more than one specimen tree per calendar year	Motioned to eliminate the requirement for a permit to remove one specimen tree per calendar year. The motion was voted and passed (5 - 0).	Motioned to remove Section 16-10.50-D. The motion was voted and passed (5 - 0).	Council indicated agreement with CC action. See p. 8-7 of the Oct. 3 draft land development regulations.

5. Minor Subdivision Procedure (16-12.30)

What We Heard	PC Action Taken	MC Discussion
Neighborhoods need to receive public notice of minor subdivisions so as to provide an opportunity for any comments/ concerns to be made.	Motioned to include a provision for public notification in the Minor Subdivision regulations. The motion was voted and passed (4 - 1). Paul Player dissented.	Council indicated agreement with PC action. See p. 12-1 of the Oct. 3 draft land development regulations.

Section 16-12.30 Public Notice

Subdivisions eligible for processing as minor subdivisions require the same noticing requirements as major subdivisions in accordance with Sec. 16-15.10-H.

6. Section 27-2.50 Expired, Obsolete and Converted Zoning Districts

Re-inserted districts in this section that were inadvertently deleted. See p. 2-3 of the Oct. 3 draft zoning ordinance.

7. Section 27-4.30 Lot and Building Regulations: Variable Lot Coverage Ratios

Due to additional items being raised from the meetings, such as building lot coverage, staff reassessed the proposed “straight-line” percentage increase and formulated a variable approach for larger lots, as outlined below. See p. 4-4 of the Oct. 3 draft zoning ordinance.

Regulation	R-150	R-100	R-85	R-75	R-60	R-50	RA-5	RA-8
Maximum Lot Coverage (%)								
Lot area = 43,560 sq. ft. or more	25	25	25	25	25	25	25	25
Lot area = 30,000 to 43,559 sq. ft.	30	30	30	30	30	30	30	30
Lot area = 20,000 to 29,999 sq. ft.	35	35	35	35	35	35	35	35
Lot area = 19,999 sq. ft. or less	40	40	40	40	40	40	50	50

8. Establishing a Planned Development (Section 27-6.20-B)

What We Heard	PC Action Taken	MC Discussion
Planned developments should be allowed outside two subareas; the current regulations are too restrictive.	Motioned to allow planned developments in any appropriate mixed-use category where it meets the requirements of 10 acres for existing commercially zoned properties and 25 acres for existing residentially zoned properties. The motion was voted and passed (5 - 0 - 1). Paul Player abstained.	Council ultimately indicated support for establishing a minimum project size of 15 acres for projects outside master plan areas. See p. 6-2 of the Oct. 3 draft zoning ordinance.

Section 27-6.20-B. Establishing a Planned Development

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2. PD districts must have a minimum contiguous area of 10 acres if located within the boundaries of an adopted master plan. PD districts outside the boundaries of an adopted master plan must have a minimum contiguous area of 15 acres.

9. Rooming house (Section 27-8.20-B)

What We Heard	MC Discussion
Rooming houses may not be desired to be defined separately from hotels.	Remove rooming houses as a definition/use, provided the definition of hotel includes uses of this nature. See pp. 4-2, 8-4 and 12-2 of the Oct. 3 draft zoning ordinance.

Section 27-8.20-B. Group Living

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Rooming House

A building containing one or more lodging units but not more than 20 lodging units, all of which offer non-transient lodging accommodations, available only at weekly or longer rental rates to the general public. Meals may only be provided from a single

central kitchen and compensation for such meals, if provided, must be included in the weekly or longer rental rate. No restaurant, meeting, reception, or banquet facilities are allowed as part of a rooming house use.

Will be regulated under **Section 27-8.40-J(2) Hotel/Motel:**

An establishment, other than a bed and breakfast, in which short-term lodging is offered for compensation and that may or may not include the service of one or more meals to guests. Typical uses include hotels and motels.

10. Section 27-9.20 Attached Houses

The following building separation requirements apply to all attached house buildings on sites containing 2 or more attached house buildings. For the purpose of these provisions, the front and rear faces are those exterior building walls generally perpendicular to the party (or abutting) walls between dwelling units and the side face is the exterior building wall that is generally perpendicular to the building’s front and rear faces. See p. 9-1 of the Oct. 3 draft zoning ordinance.

11. Section 27-9.120 Multi-unit Residential Buildings

The following building separation requirements apply to all multi-unit buildings on sites containing 2 or more multi-unit buildings. For the purpose of these provisions, the front and rear faces are those exterior building walls generally perpendicular to the party walls between dwelling units and the side face is the exterior building wall that is generally perpendicular to the building’s front and rear faces. See p. 9-6 of the Oct. 3 draft zoning ordinance.

12. Home Occupations (Section 27-10.30)

What We Heard	MC Discussion
It is important to maintain the integrity of single-family residential districts and not have increased levels of traffic/impacts due to home occupations.	Council indicated interest in regulating home occupations further—separating indoor educational-related occupations from others in Type B. See p. 10-5 of the Oct. 3 draft zoning ordinance.

Section 27-10.30-G. Supplemental Regulations for Type B Home Occupations

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- Teaching-related home occupations conducted entirely within the principal dwelling are subject to the administrative permit procedures of Article 23. Other Type B home occupations are allowed only if reviewed and approved in accordance with the special land use permit procedures of Article 19.

13. Residential Composting (Section 27-10.60)

What We Heard	PC Action Taken	MC Discussion
Provisions on composting needed to be updated to include prohibition on meat products and inclusion of waste from non-carnivorous animals.	Motioned to add note to Section 27-10.60 to prohibit meat products, eliminate Section 27-10.60-B and Section 27-10.60-C, and allow waste from herbivores to be used in composts in Section 27-10.60-G. The motion was voted and passed (6 - 0).	Council indicated support of the PC action. See p. 10-7 of the Oct. 3 draft zoning ordinance.

Section 27-10.60-C

...Meat products are prohibited in residential compost piles or bins.

Section 27-10.60-G

Only animal waste from herbivores is allowed within compost piles or bins.

14. Temporary Outdoor Seasonal Sales (Section 27-11.30-C)

What We Heard	CC Action Taken	MC Discussion
90 days is too long for temporary outdoor seasonal sales	Motioned to change 90 days to 60 days for temporary outdoor seasonal sales. The motion was voted and passed (4 - 0). Tony Delmichi abstained.	Council indicated agreement with CC action. See p. 11-2 of the Oct. 3 draft zoning ordinance.

Section 27-11.30-C(2)

No permit for temporary outdoor seasonal sales may be approved for the same lot or any portion of the same lot for a cumulative total of more than 60 days in any calendar year.

15. Temporary Portable Storage Containers (Section 27-11.30-E)

What We Heard	PC Action Taken	MC Discussion
Provisions need to be added to the maximum amount of time a temporary portable storage container can be located on a property when a construction permit is involved; 60 days is too short.	Motioned to add language to Section 27-11.30-E for buildings under construction to be allowed temporary portable storage containers for a maximum of 120 days. The motion was voted and passed (6 - 0).	Council indicated support of the PC action, with the added provision: If a project is completed before the 120 days expires, a C.O. or C.C. will not be issued until the temporary portable storage container has been removed from the property. See pp. 11-3 and 11-4 of the Oct. 3 draft zoning ordinance.

Section 27-11.30-E Temporary Portable Storage Containers

1. Temporary portable storage containers are permitted for a period not to exceed a total of 120 days within any calendar year.
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7. Certificates of occupancy or completion may not be issued until the portable storage container is removed from the property.

16. Location of Off-Street Parking (Section 27-12.60-B)

What We Heard	CC Action Taken	MC Discussion
Trailers and recreational vehicles should be allowed to park closer to property lines	Motioned to reduce the parking requirements of trailers, recreational vehicles and similar vehicles to the property line. The motion was voted and passed (5 - 0).	Council indicated that the regulation of a 20-foot buffer from any lot line should remain in the ordinance. See p. 12-10 of the Oct. 3 draft zoning ordinance.

Section 27-12.60-B(5)

The parking and outdoor storage of trailers, recreational vehicles, travel trailers, campers, pickup coaches, motorized homes, boat trailers, boats and similar vehicles and equipment is prohibited in street yards and within 20 feet of any lot line

17. Landscape Material and Design (Section 27-13.80)

What We Heard	PC Action Taken	MC Discussion
Limiting the minimum size of shrubs and ornamental grasses to 3-gallons seems too large and the footnote to Section 27-13.80-I(3) needs to be removed if the city arborist is no longer considering revisions to the provisions.	Motioned to change Section 27-13.80-E for the minimum size of shrubs and ornamental grasses to be 1-gallon and remove the footnote in Section 27-13.80-I. The motion was voted and passed (6 - 0).	Council indicated agreement with PC action. See pp. 13-13 and 11-4 of the Oct. 3 draft zoning ordinance.

Section 27-13.80-E. Shrubs and Ornamental Grasses

Shrubs and ornamental grasses used to satisfy the requirements of this article must be a minimum 1-gallon size.

Section 27-13.80-I(3)

Footnote removed.

27-15.60 Measurement of Wing Wall and Retaining Wall Height

The height of wing walls and retaining walls is measured from the bottom of the footing or foundation at the base of the wall to the topmost point on the wall. See p. 15-2 of the Oct. 3 draft zoning ordinance.

18. Concurrent Variances (Section 27-18.110 and 27-19.100)

What We Heard	CC Action Taken	MC Discussion
Mayor and Council should not have the ability to approve variances simultaneously with amendment applications	Motioned to remove concurrent variance regulations from Chapter 27. The motion died due to lack of a second as the remaining members preferred the concurrent variance option.	Council indicated a lack of support for the addition of concurrent variance provisions. See pp. 18-5 and 19-4 of the Oct. 3 draft zoning ordinance.

19. Terms Beginning with "H" (Section 27-32.10-H)

What We Heard	PC Action Taken	MC Discussion
The inclusion of pit bulls as non-household pets is contradicting to the definition of companion animals, which includes domestic dogs.	Motioned to remove the term "pit bull" from the household pet definition. The motion was voted and passed (5 - 1). Paul Player dissented.	Council indicated agreement with PC action, and called upon Staff to come back with a better description of household pet and how they should be regulated. See pp. 8-8, 10-5, 32-1 and 11-4 of the Oct. 3 draft zoning ordinance.

Section 27-8.40-B Animal Care/Boarding

The keeping of and care for more than 10 companion animals or the for-profit keeping and care for any number of companion animals. Typical uses include boarding kennels, pet resorts/hotels, doggy or pet day care facilities, foster care homes, dog training centers and animal rescue shelters.

*The remainder of this item will be addressed in a future text amendment to Chapter 6, Animals.

20. Nonconforming multi-family uses in O-I (Section 27-29.10)

After the special called meeting in August, Staff was contacted by the Atlanta Apartment Association with concerns of the proposed nonconforming language as they relate to multi-family uses and structures. The primary issue the Atlanta Apartment Association had was losing the ability to rebuild if various willful damages occurred outside of their control. As a result, Staff worked with the Association on language that forwards the intent of the proposed regulations while addressing their concerns. See pp. 29-3, 29-5 and 29-6 of the Oct. 3 draft zoning ordinance.

Section 27-29.30-F. Loss of Nonconforming Status

1. Intentional Destruction.

When a nonconforming structure is intentionally destroyed, razed or dismantled by the deliberate act of the owner or its agent, all nonconforming structure rights are lost and re-construction of the nonconforming structure is prohibited.

2. Accidental Destruction.

Unless a nonconforming structure loses its nonconforming structure rights pursuant to Section 27-29.30-F.1, the structure may be re-stored or repaired as long as no new conformities are created and that the existing degree of nonconformity is not increased. A building permit to reconstruct a destroyed or damaged structure must be obtained within 2 years of the date of occurrence of the damage.

Section 27-29.40-F. Loss of Nonconforming Status

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3. Destruction

a. Intentional Destruction

When a building containing a nonconforming use is intentionally destroyed, razed or dismantled by the deliberate act of the owner or its agent, re-establishment of the nonconforming use is prohibited.

b. Accidental Destruction

Unless a building containing a nonconforming use loses its nonconforming use rights pursuant to Section 27-29.40-F.3.a, the building and use may be restored or repaired provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit to reconstruct a destroyed or damaged building must be obtained within 2 years of the date of occurrence of such damage.

21. Section 27-30.20 Lot Frontage

Clarification for frontage measurements added. See p. 30-1 of the Oct. 3 draft zoning ordinance.

22. Section 27-32.10-L. Terms Beginning with "L": definition removed

~~Lot width means the horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the street.~~

23. Section 27-32.10-H. Terms Beginning with "H": definition removed

~~Household pet means a domestic companion animal that is customarily kept for personal use and enjoyment including domestic dogs, domestic cats, canaries, parrots, parakeets, domestic tropical birds, hamsters and guinea pigs. Household pet does not include livestock, poultry, pot belly pigs, pit bulls, or snakes.~~

24. Any additional changes addressed in October 3, 2013 draft ordinances.

ANALYSIS

Looking Ahead

If Mayor and Council choose to codify Code Chapters 27 and 16 at the Second Read on October 14, 2013, then the adopted regulations will take effect on October 21st. To help with the transition, Staff will hold two informational sessions for developers, property owners, etc. in the Council Chambers on October 29, 2013, from 9:00 a.m. to 11:00 a.m., and November 11, 2013, from 6:00 p.m. to 8:00 p.m. Before both meetings, Staff will compile a list of questions to address so as to provide clarification to key changes in the ordinances.

Items to be Reviewed in approximately 6 Months

The City’s Ordinances are established to implement goals and visions identified through the long-range planning process. As those long-range planning documents are dynamic, the implementation tools themselves should be amended as necessary to maintain concurrence with adopted plans. As with any regulation, there are provisions that may need to be applied first to determine if they are adequately implementing the City’s vision. As such, Staff is committed to tracking the functionality of the Ordinances over the next six months; again six months after that; and annually after that to ensure the Zoning and Land Development Ordinances are effective implementation tools. As a result of public comment and Council discussion, those items we have already identified as requiring perusal over the next six months are as follows:

1. Exemptions (Stream Buffers) (Section 16-8.40-B)—Additional Changes

What We Heard	PC Action Taken	MC Discussion
Homeowners should be allowed to build or replace structures in the City stream buffer with the minimum amount of land disturbance activity needed.	Motioned to amend Section 16-8.40-A to allow limited land disturbance to build or rebuild decks, porches, and accessory uses up to the 25 foot state stream buffer. The motion was voted and passed (4 - 1). Bob Dallas dissented.	Council was interested in allowing minimal additions of impervious surfaces (e.g.: swing sets) located 50 feet or more from the stream, in addition to the exemptions already added to this draft.

2. Food Trucks (Section 27-9.80)

What We Heard	CC Action Taken	MC Discussion
Need clarification as to whether or not ice cream trucks are considered food trucks	No further action was taken. Staff determined, pursuant to Section 18-19(b)(16), ice cream trucks are considered “sound trucks,” which are declared to be loud, disturbing, and unnecessary noise in violation of the noise ordinance regulations. Therefore, because of the noise they emit and the fact that retail sales are not a permitted use in residential districts, ice cream trucks are prohibited.	Council indicated support for food trucks and ice cream trucks in the City, and showed interest in a text amendment of Chapter 18, Section 18-19(b).

3. Thresholds for Compliance (Section 27-7.20-C)

4. Parking Ratios (Multiple Sections)

5. **Amending Conditions of Approval—Major Changes (Section 27-18.120-A)**
6. **Others as identified moving forward.**

RECOMMENDATION

Staff recommends the re-adoption and codification of City Code Chapters, 27, Zoning and 16, Land Development be **approved** in accordance with the October 3, 2013 draft ordinances.

At their regular June meeting, the Community Council heard the City's request to codify amendments to City Code Chapters 27, Zoning, and 16, Land Development, and recommended approval with additional amendments. The motion passed (4 - 0 - 1). Tony Delmichi abstained.

The Planning Commission, at their regular July meeting, reviewed the requested amendments to City Code Chapters 27 and 16 and made a motion to approve with staff recommendations, subject to the Commission's amendments. The motion was voted and passed (6 - 0 - 0).

Attachments

- Ordinance to Amend Chapter 16
- Ordinance to Amend Chapter 27
- Chapter 16 – Land Development Ordinance (Marked-up and Clean Versions)
- Chapter 27 – Zoning Ordinance (Marked-up and Clean Versions)
- Community Council Meeting Minutes from June 13, 2013
- Planning Commission Meeting Minutes from July 9, 2013