



TO: Kent Studebaker, Mayor
Members of the City Council

FROM: Leslie Hamilton, AICP, Senior Planner
Planning and Building Services

SUBJECT: Study Session: Ordinance 2732, Annual Community Development Code (CDC) Amendments (LU 16-0030)

DATE OF REPORT: December 13, 2016

DATE OF MEETING: December 20, 2016

ACTION

This report provides background information to the Council for its December 20, 2016 study session regarding proposed amendments to the Community Development Code (LOC Chapter 50 – CDC). A study session was requested due to the large number of amendments proposed and the policy implications of some amendments. The public hearing on this proposal is tentatively scheduled for February 7, 2017. The Council may direct staff to prepare a draft ordinance and return for the public hearing before the Council.

INTRODUCTION/BACKGROUND

The proposed amendments to the Community Development Code (CDC) [Ordinance 2732] are part of the City's on-going effort at process improvement, which includes making regulations more usable for residents, developers, and City staff by correcting errors, eliminating text ambiguities and redundancies, and codifying past code interpretations.

The proposed amendments were the subject of Planning Commission (Commission) work sessions on June 27 and October 10, 2016, and Planning Commission public hearings on November 14 and November 28, 2016. For the purposes of review, staff encourages the Council to read the staff report dated November 3, 2016 (Exhibit D-1), the Findings from the Planning Commission (Exhibit B-1), and the updated code amendments (Attachment 2, dated 12/13/16 to Exhibit A-1).

DISCUSSION

At its public hearing on November 28, the Commission recommended that the Council adopt the proposed amendments. (See Exhibit F-2 for a summary of proposed amendments). Of the 40 code amendments, the items below generated discussion at the Commission's public hearings.

Item 16: Courtyards in DRDD (Pages 14-16 of Attachment 2): Ordinance 2651, effective in February 2015, created clear and objective design standards for multi-family, residential mixed-use, and townhome development in the DRDD. During review of a recent townhome development in DRDD, staff noted that the discretionary DRDD standards require that courtyards visible from the public street be provided, but in the clear and objective DRDD standards, courtyards are optional and the related design standards apply only where courtyards are provided.

The original intent of Item 16 was simply to clarify whether courtyards are a requirement or not; however, based on a recent townhome development (LU 15-0061), the question of whether courtyards should be required on townhome-like (single family attached) development – which typically does not have common areas – was raised. Additionally, it may not be practical or desirable to require that small developments have courtyards. The proposed amendments to the DRDD standards require that courtyards visible from the public street be provided on all new commercial, multi-family and residential mixed-use developments. (This is not a requirement of public access to private courtyards, but a development could provide publicly accessible courtyards, such as in the Wizer Block development.)

The amendment is structured to exempt small projects by requiring courtyards only when a building wall adjacent to a street is more than 200 feet in length. Thus, a courtyard will not be required on block faces (east-west) with an intersecting alley, because the street frontage on each side of the alley is only 120 feet in length, but a courtyard would be required if new development is more than half the north-south depth of the block (downtown blocks are 400 feet deep). If an alley is vacated, the courtyard requirement would apply along the corresponding east-west street. The Commission supports the proposed change but also recommends returning in 2017 with proposed amendments to identify minimum dimensions and amenities for required courtyards in the DRDD.

Item 30: Fences: Combination Fence/Wall (Pages 29-30 of Attachment 2): The fence standards limit the height of a fence to four feet when the fence is located within 10 feet of the property line abutting a public street. The proposed amendments identify locations and objective design criteria where a fence or fence/wall combination up to six feet in height would be permitted when located within 10 feet of a public street. The intent is to support residents' desire for privacy and noise attenuation along major roads, balanced with the community's interest in maintaining aesthetics. This amendment would also be a process improvement and streamline the Development Code, as enforcement of these two standards requires an inordinate amount of staff time (Code Enforcement and

Planning) and violations often easily meet the criteria for a Minor Variance. As proposed, a six-foot tall fence would be allowed in limited locations if the following design elements were included:

- The top one foot of the fence is at least 25% open (e.g., lattice or other see-through design); or
- The fence segments are staggered/offset (32 inches per 20-foot segment, or 16 inches per 10 feet); and
- The bottom of the fence is screened by shrubs planted from three gallon containers (minimum) and spaced no more than three feet apart at the time of planting.

For reference, the building design standards for side yard appearance and screening that apply to side walls include options for side wall offsets (16 inches minimum); these offsets, combined with minimum requirements for windows and/or doors (where a side of a building faces a street), break up blank walls to maintain compatibility with adjacent residences. For fences, per the above example, no door or window is required but the fence would contain breaks or offsets, and landscaping would be required.

Item 34: Pre-Application Waiver (Pages 33-34 of Attachment 2): The purpose of a Pre-Application Conference is to “discuss the proposal, the applicable criteria and the requirements for completing an application.” (LOC 50.07.003.1.e.iii). The proposed amendments exempt the Pre-Application Conference requirement for specified small projects where it is not necessary to require a Conference. The applicant may always request a pre-app, if desired. This amendment would also be a process improvement and streamline the Development Code.

Based on input from the Planning Commission and public during the Commission’s work session on the proposed amendments, staff recommended the following types of prospective applications be categorically exempt from the Pre-Application Conference:

- Modifications to an approved Development Permit where there is no increase in the intensity of the use and no new building permit would result;
- City projects to construct a non-habitable structure not abutting a residential property; and
- Minor variances to the fence standards when proposed to resolve a Code Enforcement citation.

Item 38A: Neighborhood Association Appeal Fee Waiver; Documentation (Page 37-38 of Attachment 2): This amendment requires submittal of documentation by a Neighborhood Association that has filed an appeal of a development application decision, demonstrating the filing of the appeal has been duly authorized in accordance with the Neighborhood Association’s bylaws. It is intended to promote certainty for all parties to an appeal while providing sufficient time for a Neighborhood Association to, if necessary, ratify the appeal filed in the Neighborhood Association’s name. This amendment is proposed because,

unlike other appellants, if a Neighborhood Association (NA) appeals a land use decision, the appeal fee, which covers the average expense of staff time for appeal hearing preparation, is waived. For appeals of a staff decision to a hearing body, the appeal fee is \$596; for appeals of a hearing body decision to City Council, the appeal fee is ½ of the original application fee, but not to exceed \$5,197 (2017 Master Fee Schedule).

The proposed amendment would require documentation (e.g., letter, meeting minutes, or other document) from the NA that the appeal request was approved or ratified in the manner provided by the association's bylaws, typically by a vote of the NA board or membership. This documentation, which could be submitted as early as the filing of an appeal (as the NA's authorization to file an appeal usually comes prior to the filing of an appeal on its behalf), would have to be presented no later than 5 pm on the business day prior to the public hearing. The quickest turn-around between the issuance of a land use decision and a hearing is 34 days, based on the two-week appeal period after a decision is published and the 20-day notice required for a public hearing once an appeal is filed. In reality, the time period for a NA to gather the necessary documentation is greater because the hearing body typically meets only twice per month and only on specific days of the week.

As part of the discussion of Item 38A, the Planning Commission considered extending the fee waiver to Home Owners Associations (HOAs) and a specified number of petitioners in areas that do not have an active Neighborhood Association. This waiver is not included in the current amendment package as it would require amending the Master Fees and Charges schedule, which is under the purview of the City Council. The Commission requests that the City Council consider an extension of the appeal fee waiver to such groups in 2017.

ALTERNATIVES & FISCAL IMPACT

The Council may provide direction to staff whether to prepare a draft ordinance and schedule a public hearing on the proposed Code amendments. The proposed amendments may indirectly have a positive fiscal impact, as they consist of code streamlining and process improvements in land use permitting.

There are no fiscal impacts.

RECOMMENDATION

Staff recommends that Council identify items in the proposed Code amendments that the Council would wish additional information on, and provide direction to staff for preparation of a draft ordinance and subsequent public hearing before the Council.

EXHIBITS**A. Draft Ordinances**

- A-1 Draft Ordinance 2732, 10/26/16
Attachment 2, Draft Code Text, 11/02/16 (superseded by 12/13/16 version)
Attachment 2, Draft Code Text, 12/13/16

B. Findings, Conclusions and Order

- B-1 Planning Commission Findings, Conclusions and Order, approved 12/12/16
(Please note that Attachment A-1 referenced in the Findings is not included. Refer to Attachment 2 (12/13/16) of the Draft Ordinance 2732 (Exhibit A-1). The complete set of Findings can be viewed using the link below.

C. Minutes (no current exhibits)**D. Staff Reports**

- D-1 Planning Commission Staff Report, 11/03/16

E. Graphics/Plans (no current exhibits)**F. Written Materials**

- F-1 Staff Memo from Evan Boone, Similar Use Determination, 11/02/16
F-2 Matrix of Proposed Code Changes, 12/05/16

G. Letters

- G-1 E-Mail from James Stupfel, Hallinan Heights Neighborhood Association 11/14/16

Staff reports and public meeting materials can be found by visiting the project web page. Use the link below to visit the City's "Project" page. In the "Search" box enter LU 16-0030 then press "Submit":

<http://www.ci.oswego.or.us/projects>