

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: May 1, 2007

- BILLS INVOLVING AMENDMENTS TO THE ZONING ORDINANCE -

ORDINANCE NO. BL2006-1177 (CRAFTON) – This zoning text change amends the sidewalk provisions of the code by modifying the basis for calculating a financial contribution in lieu of sidewalk construction. In September 2004, the council approved an ordinance amending the sidewalk provisions to grant relief to developers of property from having to install sidewalks in certain circumstances. One of the provisions of the 2004 ordinance included a payment in lieu of construction of sidewalks. Once funds are paid into the “sidewalk bank”, the ordinance provides that the funds must be expended within 24 months on sidewalk construction within the same “pedestrian benefit zone” as the property for which sidewalks would otherwise be required. The ordinance established eleven pedestrian benefit zones for the county. The amount of the payment in lieu of sidewalk construction is set on an annual basis by the department of public works based upon a review of the cost of sidewalk projects constructed by Metro. In fiscal year 2006, the contribution in lieu of sidewalk construction was set by public works at \$92 per linear foot.

This ordinance would modify the method of calculation for determining the amount required to be paid into the sidewalk bank in lieu of sidewalk construction. Instead of being determined by the department of public works, the amount of contribution would be based upon a graduated scale. The cost would be \$30 per linear foot for the first fifty feet, \$60 per linear foot for fifty-one through one hundred feet, and \$90 for each additional linear foot in excess of one hundred feet.

This ordinance has been disapproved by the planning commission.

ORDINANCE NO. BL2007-1367 (SUMMERS, TYGARD & WILHOITE) – This zoning text change would provide a mechanism for the planning commission to classify a planned unit development (PUD) as inactive when no construction has taken place on the property within six years. This ordinance is designed to be a compromise to two competing PUD review bills (BL2005-629 & BL2006-1259), both of which have been deferred indefinitely.

This ordinance provides that the planning commission may review any PUD on its own initiative or at the request of a member of council or property owner within the PUD area to determine

whether development activity has occurred within six years from the date of enactment of the PUD or the most recent amendment to the PUD by the council. If it is determined that no development activity has occurred in the past six years, the planning commission is to recommend legislation to the council to either renew the PUD, cancel the PUD, or amend the PUD along with necessary changes to the base zoning. The planning commission would have 90 days after the review process commences in which to hold a public hearing and make a recommendation to the council. If the planning commission fails to act within 90 days, the commission shall be deemed to have made a recommendation to renew the PUD without alteration.

In order for a PUD to be classified as inactive, the following three criteria must be satisfied:

1. Six or more years have elapsed, as described above.
2. Construction has not begun on the site. The ordinance provides that "construction" includes physical improvements such as water/sewer line installation and/or the pouring of foundations. Site clearing, temporary construction material storage, and the placing of temporary structures on the property would not be considered construction.
3. No right-of-way acquisition or construction has begun on off-site improvements required by the council as a condition of the PUD.

If, after reviewing the PUD, the planning commission determines that the PUD is not inactive, a re-review shall not be initiated for at least one year. Once the council receives a recommendation from the planning commission regarding an inactive PUD, the council will have six months in which to re-approve, amend, or cancel the PUD. Failure by the council to enact legislation within the six month period will result in the developer being able to develop the property in accordance with the existing PUD plan. This would not prohibit the council from enacting another ordinance during the six month time period to cancel or modify the PUD.

The effective date clause in this ordinance states "this ordinance shall take effect 270 days after its passage ..." The Charter provides that no ordinance shall take effect for twenty days after its passage, unless the ordinance states that the welfare of the Metropolitan Government requires that it take effect *sooner*. There is a housekeeping amendment for this ordinance that would include the traditional effective date clause, but would add a separate section providing that no PUD review shall take place for 270 days after the ordinance is enacted.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2007-1429 (SUMMERS) – This zoning text change would delete "historic home events" as a special exception (SE) use, which would prohibit them from being located in residential areas. Under the zoning code, "historic home events" must be permitted by the board of zoning appeals (BZA) as a special exception use. The zoning code defines historic home event as "the hosting of events such as, but not limited to, weddings or parties for pay at a private home which has been judged to be historically significant by the historic commission." The code includes certain criteria that must be met in order for property to be permitted to hold these home events, such as parking standards, limited meal service, and a requirement that the home be owner-occupied. There are currently only a few properties permitted as a historic home event use in residential areas, including Riverwood, the Demonbreun House, and the Ambrose House.

If this ordinance is enacted, historic home events would no longer be allowed in the R, RS, and multi-family residential districts. In order to operate a historic home event facility in one of these residential areas, the property owner would have to rezone the property either to a specific plan (SP) district or the neighborhood landmark (NL) overlay district, which would require council approval rather than the BZA. The use would still be permitted as an SE use in the agricultural and office neighborhood districts.

There is an amendment to the bill to address two concerns raised by the planning commission staff regarding retention of the definition of historic home events, as well as the general standards for the use in the zoning code.

This ordinance is an alternative to Ordinance No. BL2007-1364, which will be on third reading at the second council meeting in May. As opposed to prohibiting historic home events in residential areas, Ordinance No. BL2007-1364 would add more stringent standards that must be satisfied before the BZA could grant an SE permit for the use.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2007-1430 (EVANS) – This zoning text change would add to the review and enforcement provisions to be used by the board of zoning appeals (BZA) in determining whether to grant a special exception (SE) use permit, and would clarify the role of the historic zoning commission in the review and approval of the neighborhood landmark (NL) zoning overlay. SE uses are not permitted by right, but are only allowed if they are approved by the BZA. Some examples of special exception uses in residential zoning districts include historic home events, day care facilities, churches, and recreational centers. In order for the BZA to grant a special exception permit, the applicant must prove that all of the code requirements for the SE use have been met. The code currently requires applicants to show that the proposed use will not adversely impact abutting properties, that features of historical significance will be preserved, and that traffic will not be negatively impacted. This ordinance would add some additional requirements that applicants for an SE use would have to meet in order to obtain the permit from the BZA. All of these provisions are included as part of Substitute Ordinance No. BL2006-1364, which will be on third reading at the second council meeting in May. However, the council office is of the opinion that these provisions exceed the scope of the caption of Ordinance No. BL2006-1364, as that bill is limited to historic home event uses. This ordinance essentially copies the provisions from the substitute ordinance into a new ordinance with a broader caption.

This ordinance would add the following new general requirements for uses permitted by special exception:

1. The BZA would be required to consider past codes and zoning enforcement actions taken against the property owner.
2. The SE use must be compatible with the general plan, and the planning commission is to make a recommendation to the BZA regarding its plan compatibility.
3. Applicants and holders of special exception permits would expressly be expected at all times to comply with the property standards code, zoning regulations, as well as the guarantees and representations they make to the BZA.
4. Once Metro takes three or more zoning and/or codes enforcement actions against the special exception permit holder, the zoning administrator is to request a show cause

hearing before the BZA to consider revocation of the permit. Further, a show cause hearing is to be requested if the zoning administrator becomes aware that the permit holder has not adhered to promises made to the BZA at the time the permit was granted. The show cause hearing would be publicly advertised in the same manner as other BZA hearings.

5. The BZA would be prohibited from granting variances to the general or specific standards of an SE permit.

This ordinance would also specify the manner in which the U.S. Secretary of the Interior standards apply to the treatment of historic properties. Compliance with these standards would be required before any changes could be made to any property that is listed on the National Register for Historic Places or is eligible for listing on the historic register. Finally, the ordinance would require that any existing or proposed NL overlay district be reviewed by the historic zoning commission to ensure that it complies with the applicable guidelines.

This ordinance has been approved by the planning commission with a recommended amendment.

ORDINANCE NO. BL2007-1431 (BRILEY) – This zoning text change would limit the height of single and two-family homes within the urban zoning overlay (UZO) to 35 feet. The code currently provides that homes in the UZO cannot exceed three stories. However, there is no limitation in the code regarding the height of each story. The effect of the three-story limitation is that some residences in the UZO are substantially taller than the surrounding homes. This ordinance would cap the height of the structure at 35 feet. Although the code does not include a precise method of measuring height, the zoning administrator has instructed the codes inspectors to determine the height by measuring from an average of the four corners of the home.

This ordinance has been approved by the planning commission.