

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of January 17, 2018

SUBJECT: Unified Development Code - Amendments to repeal Sections 4:16 through 4:20 and Section 4:30 of Chapter 47 (Streets and Curb Cuts), and the entirety of Chapter 55 (Zoning), Chapter 56 (Prohibited Land Uses), Chapter 57 (Subdivision and Land Use Regulations, and the Land Development Regulations and Attachments A, B, C, and D), Chapter 59 (Off-Street Parking), Chapter 60 (Wetlands Preservation), Chapter 61 (Signs and Outdoor Advertising), Chapter 62 (Landscaping and Screening), Chapter 63 (Soil Erosion, Sedimentation and Storm Water Management) and Chapter 104 (Fences) and adopt a new Chapter 55 (Unified Development Code).

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the amendments to Section 4:16 through 4:20 and Section 4:30 of Chapter 47 (Streets and Curb Cuts) and repeal Chapter 55 (Zoning), Chapter 56 (Prohibited Land Uses), Chapter 57 (Subdivision and Land Use Control, and the Land Development Regulations and Attachments A, B, C, and D), Chapter 59 (Off-Street Parking), Chapter 60 (Wetlands Preservation), Chapter 61 (Signs and Outdoor Advertising), Chapter 62 (Landscaping and Screening), Chapter 63 (Soil Erosion and Sedimentation Control), and Chapter 104 (Fences) and adopt a new Chapter 55 (Unified Development Code) to replace the repealed chapters.

STAFF RECOMMENDATION:

Staff recommends that the City Code be amended and certain chapters repealed as noted, and the new Unified Development Code be adopted to replace the repealed chapters, because the UDC is substantively the same as the current codes, except where specifically noted, but is significantly more coherent, consistent, concise, and user-friendly. It is also comprehensive, clear, enforceable and legally defensible, and adaptable, fulfilling to goals of the Zoning Ordinance Reorganization project.

UPDATED STAFF REPORT:

A public hearing was held by the Planning Commission on December 19, 2017 and continued to January 17, 2018. Two people spoke, each expressing general support for the reorganization concept and posing questions to better understand certain specific issues of personal concern.

Since that December 19th public hearing, two more office hour sessions were held, on January 10 and January 11, 2018. (Two were held prior to the public hearing, on December 13th and 18th.) The first two sessions each had one person stop by, a group of five people came to the third session, and none at the last session. Staff also had an individual appointment with one person. All of those interested people had few questions or concerns. Instead, they mostly desired more detailed explanations of the new format and demonstrations of the similarities and differences between the current language and the proposed language.

Staff has continued to work on the draft, correcting grammatical and formatting errors. Revised drafts now use “track changes” features to illustrate work done since publishing the adoption draft on November 20, 2017. As explained previously, footnotes have been extensively used to identify non-substantive changes, substantive changes, and origin references rather than track changes from current language to the proposed language.

COMMENTS RECEIVED:

As expected, very few comments have been submitted in any form regarding the UDC document. However, one item of concern has emerged from the development community: the proposed definition of floor area. (Please see communications to Planning Commission attached to the January 17, 2018 agenda.)

Addressing the somewhat ambiguous nature of the current definitions of floor area (the terms actually used in the Zoning Ordinance are *usable floor area*, *residential* and *usesable floor area, nonresidential*) was identified from the beginning as an important goal, and it would be likely be a substantive change from the recent interpretation. (See pages 13 and 29 of the [Diagnosis and Annotated Outline](#).)

For several months in both 2009 and 2012, the Technical Working Group and the Ordinance Revisions Committee discussed the challenges with the current definitions and, after numerous revisions and rethinking, developed a single definition of floor area that was applicable and appropriate for residential, nonresidential, and mixed use buildings. It is easily defined and described, verifiable without the need for additional information or tools, and results in intuitive floor area ratios.

Floor Area: The sum of the area, in square feet, of the floor of all stories of a building or structure measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings, excluding attics in which occupancy is prohibited under Chapter 105 (Housing Code) of City Code in buildings that contain only residential uses.

This definition does not exclude any spaces within the envelope of a building, except attics. In recent years, those spaces within a building that do not have a “floor” and are cited within the definition of *usable floor area, nonresidential* – stairwells, escalators and elevators, ramps and vertical ducting – have been excluded from floor area and, thus, from floor area ratio calculations. The proposed definition is a substantive change from the interpretation of the still controlling definitions, which has been plainly and openly noted throughout the ZORO process.

Those presently excluded spaces are arguably not floor area but they do contribute to the mass of a building. In more than one case, a development with a maximum (with premiums) FAR of 700% are 12 stories. Because buildings with no setbacks at all are not allowed, it is to be expected that a building having a 700% FAR will not be seven stories tall. Yet, it is not generally expected that a building will have five additional stories.

It was the consensus of decision-makers to align the expectations of the community, that any space contributing to the mass of a building counts towards its floor area ratio, with the definition of floor area. However, some time has passed since this decision was made and both the individuals who comprise the decision-making bodies and the stakeholders have changed. The

Planning Commission may want to reaffirm their recommendation for the proposed definition of floor area.

When discussing floor area and floor area ratio, please note the following:

- Mixed-use buildings have always been considered as nonresidential buildings.
- Residential buildings in nonresidential districts are considered nonresidential buildings (residential districts begin with R, nonresidential districts don't).
- Residential districts are regulated by density. The regulations addressing residential development tend to use dwelling units as the base measurement (i.e. lot area per dwelling unit, parking spaces per dwelling unit) or focus on the use and function of a building (i.e. principle buildings, accessory buildings).
- Nonresidential districts are regulated by FAR. The regulations addressing nonresidential development tend to use square feet as the base measurement (i.e. square feet of floor area as a percentage of lot area, parking spaces per square foot of floor area). In nonresidential districts, any permitted principle use is allowed regardless of the initial purpose of the development.

Any definition of floor area included in the UDC must still achieve the overarching goals of the ZORO project: be clear, concise, user-friendly to both seasoned professionals and the general public alike, enforceable and legally defensible.

Prepared by Alexis DiLeo
Reviewed by Brett Lenart
1/17/18

Attachment: December 19, 2017 Planning Staff Report

References: [Unified Development Code – Adoption Draft November 20, 2017](#)

[Diagnosis and Annotated Outline](#)

[ZORO Project Plan](#)

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STAFF RECOMMENDATION:

Staff recommends that the Planning Commission postpone their recommendation to City Council until after the closure of the second public hearing scheduled for these amendments on January 17, 2018.

OVERVIEW:

The City's land use and development ordinances and regulations are scattered among 10 different chapters of the City Code. The goal of the ZORO (Zoning Ordinance Re-Organization) project is to present the existing contents of those chapters in a more coherent, consistent, concise, and user-friendly manner. The new Unified Development Code should be comprehensive, clear, usable by seasoned professionals and the general public alike, enforceable and legally defensible, and adaptable.

HISTORY:

At the direction of City Council, Planning staff and the City Attorney's Office were asked to combine all chapters of the City Code related to development into a clear, concise, single chapter. The effort, kicked-off in 2009, quickly became known as ZORO, the Zoning Ordinance Reorganization project. Clarion Associates, A consultant and expert in the field of writing and rewriting planning and development codes, was hired. A Technical Working Group (a team of

the Ordinance Revisions Committee of the City Planning Commission, a City Council member, a Zoning Board of Appeals member, and Project Managers) was assembled and staff focus groups were used to provide advice, recommendations, and testing.

The first document produced was a [Diagnosis and Annotated Outline](#). It provided a general assessment and critique of the existing land use ordinances, and proposed a structure and content of a Unified Development Code. Next, a use table was created. Then, full rough drafts were completed for staff review. Finally, a review draft was published. The [adoption draft](#) put forth for a public hearing and recommendation represents the cumulative efforts of the ZORO project.

SCOPE:

The ZORO project goal was to present the existing contents of ten development-related chapters of the City Code in a single chapter that was comprehensive, clear, equally usable by seasoned professionals and the general public, enforceable and legally defensible, and adaptable:

1. Chapter 47 (Streets and Curb Cuts)
2. Chapter 55 (Zoning)
3. Chapter 56 (Prohibited Land Uses)
4. Chapter 57 (Subdivision and Land Use Control, and the attached Land Development Regulations and Attachments A, B, C and D)
5. Chapter 59 (Off-Street Parking)
6. Chapter 60 (Wetlands Preservation)
7. Chapter 61 (Signs and Outdoor Advertising)
8. Chapter 62 (Landscaping and Screening)
9. Chapter 63 (Soil Erosion, sedimentation Control and Storm Water Management)
10. Chapter 104 (Fences)

The complete problem statement, project goals, scope of work, leadership team and project schedule are in the [ZORO Project Plan](#).

UDC FORMAT:

As proposed in the Diagnosis and Annotated Outline, the UDC is organized into eight articles. The order of articles follows the most popular current format for development codes, beginning with general provisions, then zoning districts, use regulations, development standards, and procedures. The definition section is the last article, as is typical for a reference document.

Articles III, IV, and V will be the most referenced articles on a daily basis. These articles answer “what can I do with my property,” “what does it need to look like,” and “how can I do it,” respectively.

Articles	Description
I. General Provisions	Important provisions that are relevant or apply to the entire code, including legal status, effective date and applicability.
II. Zoning Districts	The intent and purpose statements for all 33 established zoning districts and 2 overlay districts.
III. Use Regulations	<i>What can I do with my property?</i> A table of each use allowed in each district, plus the use specific standards.
IV. Development Standards	<i>What do I need? What can it look like?</i> Area, Height and Placement Regulations Special Dimensional and Site Layout Standards Parking Standards Landscaping, Screening and Buffering Streets and Access Storm Water Management and Soil Erosion Natural Features Signs Outdoor Lighting Fences
V. Administrative Bodies and Procedures	<i>How can I do it?</i> Summary of each body involved in development review. General procedures applicable to most applications and specific procedures for each type of permit, plan, amendments, and modifications.
VI. Nonconformities	Policies for nonconforming uses, structures and lots, and nonconforming situations (parking, signs, activities in wetlands, curb cuts, easements).
VII. Enforcement, Violations and Penalties	Procedures for enforcing the code and policies for violations.
VIII. Definitions	Provides all currently defined terms as well as definitions for every permitted land use. Graphics added to illustrate key terms.

The new format provides many features for clarity, easy navigation, and intuitive use, such as:

- A single chapter format.
- Use table. With the tabular format, users can move across rows to learn everywhere a particular use is allowed and move down columns to see all uses allowed in any one district. The right end column notes when use specific regulations apply.
- A comprehensive index of all Articles, Sections and Subsections. (No current code chapter has an index.)
- Navigation bar at the top of each page to quickly identify the Article, Section and Subsection.
- Section and subsection names clearly indicate the topic. (In the current worst example, Zoning Ordinance Section 5:55 Regulations Encumbering Land Required to Satisfy Regulations. Examples from the UDC include Required Parking, Material and Design Standards, Maintenance Standard.”)
- Defined terms are capitalized. This feature also sets the stage for future editions to be fully digitized and hyperlinked.
- Additional graphics to illustrate key definitions.

SUBSTANTIVE CHANGES:

While the ZORO project was first and foremost a reorganization of the existing code language, a few substantive changes were necessary to correct errors, resolve overlaps and address gaps. The most high-profile substantive changes are detailed and more fully explained as follows:

- Definitions added for every permitted use. Many definitions for use and development-related terms have been added. The very act of defining previously undefined terms is a substantive change because they can no longer be interpreted inconsistently or differently.
- New definition of Floor, Floor Area, and Floor Area Ratio. These three key terms have been clarified or newly defined. Overall, the new definitions will return the interpretation of these terms back to the historically applied definitions.
- Natural Features. Existing natural features regulations and guidelines contained the most overlaps of all development-related categories. The current Land Development Regulations and the Guidelines for the Protection and Mitigation of Natural Features have been codified and combined with Chapter 60 (Wetlands Preservation Ordinance). Some introductory and narrative language has been removed. The UDC uses the organizational structure of the Guidelines but replaces the wetland guidelines with the current Wetland Preservation Ordinance. The current guidelines for the remaining six natural features (endangered species habitats, floodplains, woodlands, landmark trees, steep slopes, and watercourses) are now requirements.
- Nonconformities. The nonconformities section of the code has been clarified to be more specific to each type of nonconforming situation – nonconforming uses, nonconforming structures and nonconforming lots. Further, the permitted uses allowed on

nonconforming lots have been tailored to the zoning use group in which the lot is located rather than simply defaulting to single-family residential use regardless of the underlying zoning district. This section also clearly notes the area, height and placement standards to apply when developing nonconforming lots, rather than the current vagueness about using standards when “uses first occur.”

- **Site Plan Submittal Requirements.** The site plan submittal requirements, now found in the Land Development Regulations, have been extensively rewritten to match current practice. A specific format is now required for better consistency and efficiency.
- **Enforcement.** The enforcement section of the code has been extensively rewritten to match current practice and state law. All violations are now civil infractions and outdated language regarding misdemeanors has been deleted. Specific sign enforcement procedures from ORD-13-04 were not carried over but have been integrated into standard enforcement procedures.

Changes, substantial and otherwise from current code language are footnoted in the UDC.

STAFF COMMENTS:

Just as preparing the UDC was a monumental task, reviewing it may seem daunting as well. Staff suggest approaching it in one of two ways.

1. For those curious about the exploring the new format, improved clarity and ease of use, simply try using the document to figure out what you can do, what rules apply, and how to do it.

Sample exercises:

- What are the setback requirements in the R1C district? What kind of permit is needed for an addition to a single-family home?
 - What kind of fence is allowed in the front yard? In the backyard?
 - In which zoning districts are child care centers allowed? What are the parking requirements for child care centers?
 - When is a conflicting land use buffer required?
 - Who approves a site plan?
2. For those focused comparing content, start by reading the footnotes. The more than 650 footnotes offer explanations regarding why text may not exactly match the current language (non-substantive changes), identify substantive changes, and note the origin of text.

Footnote	Example
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Non-substantive change	<p>¹⁵⁹ Materials reorganized for clarity with column titles. Minimum side setback columns (each side and both sides combined) were consolidated.</p> <p>³¹⁴ Separate section for Natural Features Statement of Impact has been deleted, and the required content simplified and moved to the information required for submittal of a site plan, which is how the Statement of Impact is now used in practice.</p>
Substantive change	<p>¹³ This is a new section to clarify legal requirements and current practice.</p> <p>⁴⁸⁹ Based on Sec 5:61 Dimensional Standards with significant changes. Subsections 1 through 5 are new.</p> <p>⁵¹¹ New definition.</p>
Origin reference	<p>¹⁷⁶ From current Secs. 5:64 and 5:65.</p>

Prepared by Alexis DiLeo
Reviewed by Brett Lenart
12/14/2017

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