



**Agenda Item #:** 5

**Project Title:** Discussions and Information Related to Future Amendments to MGO Chapter 33.24 - Urban Design Commission Ordinance and the Urban Design Commission Policy and Procedure Manual

**Legistar File ID #:** 71257

**Members Present:** Cliff Goodhart, Chair; Lois Braun-Oddo, Shane Bernau, Russell Knudson, Christian Harper, Jessica Klehr, and Marsha Rummel

**Prepared By:** Jessica Vaughn, AICP, UDC Secretary

## Summary

At its meeting of May 10, 2023, the Urban Design Commission **DISCUSSED** Phase 1, Administrative/Process Related updates to Chapter 33.24. Registered and speaking in support was Bill Connors, emphasizing that Smart Growth's members are among the UDC's customers, and are eager to work to improve the standards and procedures. He commended the UDC for the efforts made earlier to gather input on where improvements can be made and is eager to work collaboratively on solutions. Considering the needs of customers is best practice in an improvement process.

The Secretary gave a refresher on the timeline of the phases.

Discussion by the Commission:

- Under purpose and intent, we had a meeting a few months ago and went through options, will that be folded into that?
- (Secretary) That is Phase 2, which will follow shortly thereafter. We'll take care of Phase 1 as a comprehensive update to the process and procedures. Phase 2 will make sure the Policy and Procedure Manual is consistent.
- We just recognize that #2, Purpose and Intent is out of date and will be addressed?
- (Secretary) Correct.
- I am supportive of the design professional composition. I don't remember if we discussed this previously, part of that was updating a couple of the labels, including adding 'landscape designer,' and I'm not sure if the title or the term landscape designer can be used by anyone, if anyone can be self-proclaimed or if there's still some criteria associated with that.
- (Secretary) They have to be in a design related profession. The City Attorney's Office felt that adding 'included but not limited to' helps distinguish this as something that is related. These two design professional members do not have to have a license or any sort of registration to be a member of the Commission. We can erase the examples if that's a sticking point, get rid of the list altogether and say two 'at large design professionals.' The City Attorney's Office was very comfortable with 'including but not limited to.'
- There is still a vetting process?
- (Secretary) Yes.
- I think that's fine, as long as there's still the vetting process.
- (Secretary) There is still the application and review process, which goes through me and the Mayor's Office, for every member on the Commission.
- There's no limit to the number of terms?
- (Secretary) No changes to any of the terms.

- Design professionals: the term is somebody who passed a licensing exam of some sort, right? Design related professions is very, very broad and could be software design. You almost have to leave in the examples just to not create confusion with the vague terminology. You might want to, you can leave 'professions' but I think 'professionals' needs to be removed.
- (Secretary) In urban planning there is no licensure, we have certificates.
- I don't know if that's called professional then? It's your profession. It's semantics.
- Two members shall be 'design related professions.'
- Avoid any kind of confusion by the terminology.
- On the question of terms, I thought there was some parallel universe where you could only serve for ten years. We should make sure weren't not in conflict with that.
- (Secretary) I can double check, that may be someplace else in the code, not necessarily specific to this Commission but to all commissions in terms of public service. Beyond that you need 2/3 vote of the Council to continue.
- I have the same recollection, that's what Al Martin told me, after ten years you're done. Make sure with the City Attorney that there isn't other language somewhere else.
- (Secretary) That's the language in a different location of the code for sure.
- I would weigh in on the design professional thing since I am one of those two current designations on the Commission. When Dick Wagner recruited me, I asked him specifically: what slot am I filling? He said design professional and I kind of laughed, I didn't have any true professional standing but knew him from being on the board of the Olbrich Botanical Gardens, I was a staff horticulturalist there for 25 years. My degree was a bachelor of fine arts, he said that was a two-fer, you're a garden designer with a background in fine arts, that makes it even better. He explained that design professional was deliberately a broad term and that amongst people that run the Commission vetting applicants, it's obvious what falls into that. I think it's fine to have some examples on there, but having 'including but not limited to' is certainly appropriate.
- Just the qualifications don't necessarily mean you will be an approved applicant. It's as much about what you've accomplished and your letter of application as anything else.
- (Secretary) Looking at powers and duties, referrals, clarifying what role the UDC is serving when a referral is in front of them. Clarifying the UDC does not have review authority over things in the public right-of-way. We did give a little bit more teeth and context to referrals to include design, appearance and aesthetics.
- It seems like we're duplicating, I don't see why we would treat a referral differently in terms of our purview and statement of purpose. What we do is defined in other higher sections.
- Do we have a definition section anywhere in our ordinance? I worked on the Landmarks ordinance review process, that took three aldermanic terms. We came up with a list of definitions I think would be useful here.
- (Secretary) We do not have a definition section in our code. Currently there's nothing that provides any sort of guidance on what the Commission is looking at and what they are referring to. Roth Street is a good example where we didn't have any direction or any guidance in terms of our advisory role to the Plan Commission. There is not something that exists in the code today in terms of clarity or process when advisory to an agency or division that referred it. What is the Commission looking at? Design, appearance, and aesthetics of the project.
- Could you include or massage it to be looking at it to be consistent with the Purpose and Intent of the Commission?
- (Secretary) Absolutely.
- We can just refer right back to 33.24(2), Purpose and Intent, it's all defined there, or we have a problem with that earlier section.
- (Secretary) Thinking ahead, we also gave more teeth to the Commission's review of public projects and really clarified what that is. We talked about just buildings and structures, not at all about landscaping or site improvements. If that's a direction the Commission would want to go, to give it more clarity, we could do that. The big changes were clarifying again what the role is to give you more clarity and criteria on what you're actually reviewing.
- That excludes State owned buildings because they don't levy property taxes?
- (Secretary) Correct.

- What about the History Museum we just looked at?
- (Secretary) We're not looking at that as a public project, we're looking at that as a Downtown Core project. Think about some of the smaller City projects we've looked at that were in a UDD, MATC, the library, lots of MMSD projects, parks.
- We shall review and approve plans for public projects that are not otherwise covered by the ordinance in a UDD, a Planned Development, Residential Building Complex. Is that clear in our ordinance?
- (Secretary) That is, when review or approval of a public project is also required by the Plan Commission or Common Council, the UDC shall be in an advisory capacity. If it's a public project and a Planned Development the UDC would be advisory.
- Anything in the Downtown Dore for example falls in that category.
- There was a time the State would submit plans but only because they volunteered to. You talked about school and other governmental entities, any distinction we should be aware of?
- (Secretary) The distinction is the ability to levy property taxes.
- You're right, the Hill Farms State Office Building is in an Urban Design District and they said no.
- (Secretary) The State doesn't necessarily have to follow City ordinance, they are an entity on their own.
- (Secretary) For referrals, do we think this is good enough or do we need more specific guidance?
- Sub bullet A, the recommendation should be the same, just change A to refer to the UDC Purpose and Intent, basically.
- (Secretary) Planned Developments, clarifying that we're advisory to the Plan Commission in that role, the rest of the language is existing and not changing. Sign packages come to us as CDRs. Clarifying that when the Planned Development is also in a UDD, we're still advisory, that will not change.
- (Secretary) Residential Building Complexes, in this case the Commission is advisory to the Plan Commission, and we're going to review these under the provisions of the zoning ordinance. I don't know if we want to get any more specific than that, the zoning ordinance does have supplemental regulations to guide Residential Building Complex review. It doesn't include anything related to site design, building relationships or anything like that. If it's in a UDD, we should add that language there as well.
- Adding something about site planning to that list of principal buildings, structures, landscaping, etc.
- (Secretary) Site improvements or site planning?
- It's not clear that we can fix parking lots, I want to make sure it's clearly part of our authority.
- Use the same language from public buildings?
- (Secretary) Yes, maybe "site improvements" gets tweaked in both places. I'll work with the City Attorney's Office on that. That's a good add.
- Typically an Initial Approval really hinges on the building siting.
- I wonder too if some of that could be dealt with in the Purpose and Intent, again I worry that somebody applying for a Residential Building Complex has to chew through this paragraph, reading this list of things we may comment on, if its part of our Purpose and Intent perhaps it's very clear, it's what we always do. I don't know that we're treating Residential Building Complexes differently than public projects.
- (Secretary) Does it makes more sense to say it under general powers and duties, 'all projects before the UDC will be reviewed for consistency with the Purpose and Intent,' or put it in the Purpose and Intent?
- The powers and duties approach is what I'm suggesting. I think it's just pointing out that we don't treat a Residential Building Complex differently, it just comes to us via different paths.
- We don't have to be redundant for different project types or miss anything that way.
- (Secretary) Downtown Core and UMX zones, this section was not ever listed in our powers and duties, but we sure do this a lot. Projects in Downtown Core and UMX zones, we added new language altogether, acting as advisory to the Plan Commission, reviewing for consistency with the Downtown Urban Design Guidelines.
- The last project, was the first example of a thing we just passed, is that what you're referring to, or is it something different? The first use of the height thing?
- (Secretary) The last project we talked about tonight?
- The additional height under this new ordinance.

- (Secretary) No, not at all. This is something that was done many years ago.
- I just wondered if the new ordinance had anything for us to look at to call out in any way.
- (Secretary) It does not, that new item identifies eight areas under this subparagraph that come before the Commission. It's not our purview to review a contractual agreement between the developer and Community Development with regard to affordability and affordable units. We're not going to get a say in the number of units or number of stories or affordability, what will bring all those projects to the Commission is their zoning.
- Should this also refer back to 28.071, the zoning code design standards for various zoning districts?
- (Secretary) It could, absolutely. What may get sticky on that is technically the UDC does not oversee the zoning code. We could make a recommendation if we think it's consistent to the Plan Commission, but the Zoning Administrator gets the final interpretation. Those appeals go to the Zoning Board of Appeals.
- We could make it so we're using that and being guided by the design standards.
- (Secretary) Sometimes in the UMX zoning district we're approving when buildings are up to 20,000 square feet and where they cannot be approved administratively. If they're over 20,000 square feet you are advisory, we just need to make sure to capture that. Public projects, anything else come to mind on this one?
- Doesn't look like it.
- (Secretary) We changed this to codifying that you are the ones that administer the districts, with the help of the Secretary. I changed the title to 'establishment of districts,' and added a clarifier about painting of unpainted exterior street facing facades, something that would trigger UDC review versus an administrative review in a district.
- Aren't there cases where the building can be seen from non-street facing facades and we might want to have some review of that? A taller building, the backside of it, could be seen from an alleyway?
- (Secretary) We could add something like unpainted exterior visible from the street.
- View shed.
- (Secretary) Long views or something like that too. Facades visible from the street, not necessarily street facing.
- (Secretary) Taller buildings we have now where that's the first thing you see until the rest of the environment is built. Moving along, large retail developments. Several things got eliminated from this section, mainly because of the adoption of the TOD ordinance. We did add that if this ordinance is in conflict with the zoning code or anywhere else in MGO, the more restrictive will apply. A couple of things were taken out as it relates to TDMP items and setbacks with pedestrian circulation to be consistent with new setbacks for some of our newer more urban districts.
- (Secretary) Sub paragraph H talks about the Commission's review of signage but that was nowhere in our ordinances, so I added a subsection that talks about Section 31. Then we have sign review in UDDs and other sign reviews.
- (Secretary) Other duties of the Commission, we added the word "City" to plans the UDC will refer to.
- I did wonder about neighborhood plans, some neighborhoods are very organized and have their own plans. We're not precluded from referring to non-City plans in terms of our recommendations? It's a matter of whether you and staff would actively be bringing them to us.
- (Secretary) We have to be careful with that as City staff is bound by what is adopted and on the books. If a neighborhood wants to go on their own and make a plan we don't have a way of enforcing that if it's not adopted by the City.
- Actively seek adoption is a pretty clear term, I understand that now.
- (Secretary) Duties of the Secretary. The goal was to really identify what can be administratively approved versus what needs to go before the Commission. Right now these statements in the code are not very specific at all. This helps me determine when I'm working with potential applicants to figure out what their process really is. I added small building additions, minor building façade alterations including but not limited to awnings, changes in fenestrations or openings railing details and minor site improvements, changes in existing pavement or landscaping within UDDs if found to be in compliance with the design guidelines and requirements of the district in question. I should probably add a statement that the Secretary reserves the right to refer anything to the UDC. There's a level of clarity as well as a threshold for me and my review.
- Can we empower staff to administratively approve other things not listed here?

- (Secretary) Absolutely.
- Whether or not that need to be noted, I'm not sure.
- (Secretary) Something that the Landmarks Commission did is create a more specific list in their Policy and Procedure manual with what can be considered administratively instead of putting it in the code. It may be easier to refer to the Policy and Procedure manual and leave this general.
- It seems like an impossible task to list everything that might come up. I just wondered if it's instructive to applicants to know that the Commission has the power to empower City staff to address or approve certain things.
- Do you have anything in mind?
- We just saw that painted sign, I know it was ultimately not approved. It seems difficult to come up with a comprehensive list.
- The idea of referring to the Policy and Procedure is a good idea but we should still have some kind of list because we want this to be user-friendly, but then we're making them go look somewhere else. But I wonder what 'changes in fenestration' could look like? Having served on various committees where windows are big deal, adding the garage door to a ground floor restaurant, are there other examples?
- (Secretary) This is one of the things we run into with site plan review. Typically I look for large changes in the size of openings, a reduction in number of openings or something that gives a different sense of articulation or scale, we're talking about changes in mullion patterns, changes in window types. Sometimes you need to see it to make the call.
- Maybe signage should be included here.
- (Secretary) I have a whole section under sign permit review with a note to add crossing architectural feature as administrative. Anything else?
- Can you just handle all signage?
- (Secretary) We can look at that list in more detail. What's in the UDC code section now jives with the sign code and if you update one you have to update the other, which is why the sign code overhaul is a separate process.
- I'm suggesting the language say the Secretary may approve these things, but is not limited to just these things.
- I would like to echo the comment about sending people to the Policy and Procedure manual. Why you don't include the statement of awnings, changes in fenestration, railing details on all those things in A, B and C? It does give them something to go on and is specific.
- (Secretary) I would agree. Maybe it's reworking all three of those sub paragraphs so they're not repetitive but have consistent language.
- That the Secretary's judgment may require a presentation to the Commission.
- I have a couple of questions. I wanted to thank Bill for his letter, the thing that struck me, I don't know where it is, but where is the description of documents you need to have that's considered complete before you can get started with Urban Design, I think that should be somewhere if it's not already. And where is the enforcement?
- (Secretary) First and foremost we have a detailed application form that is also getting updated. I've heard the Commission ask for additional information and with our process change related to virtual versus in person meetings, our application is getting an overhaul with regard to submittal requirements, application types and process. All of that is on the application form as it exists today and will be updated in the next couple of weeks to reflect some of our more recent actions with regard to speaker time limits, in addition to code changes and additional information the Commission has asked for over the last year. That's the application form, and I believe that addresses your question about where submittal requirements can be found. The problem with putting that in the code is that every time you want a change the requirements, you have an ordinance that goes to Council and goes through the ordinance update process, versus the Commission deciding in 2025 they no longer need tangible materials, and that we are okay with a digital material board. So we can just change the application versus changing the code and redrafting an ordinance.
- I still think at different levels it would be helpful for applicants to know what they should provide to the UDC. As a Commissioner I know what steps up, but I don't know that it's anywhere that I can point to. It's not that hard to change the ordinances.

- (Secretary) That is exactly detailed out on the application form, it's pretty detailed on the application form what's required to be submitted to the UDC. I would like to put that back in front of the Commission in the very near future, to make sure the changes to the application materials are getting included in the form itself.
- (Secretary) With regard to enforcement, can you elaborate a little more?
- I just remember taking one of those bus tours where we went around looking at buildings, and we would notice the planters aren't there, or the plants died, or it turned out differently than the plans.
- (Secretary) Basically all of that falls within the realm of code enforcement, regardless of it being a code violation or a UDD violation. It's a complaint-based system, so I count on you guys to let us know, we count on neighbors to help us identify things. Knowing the amount of development that happens in the city, it's difficult to know all possible violations. It has come to my attention that we need to start doing UDC-focused inspections.
- If you see something, say something.
- (Secretary) Thinking about procedures, the big things here are that the UDC, for probably since the beginning of time has operated in this world of initial approvals and final approvals, so it's about time we get that in the code and explain what that is. This mimics Plan Commission and Landmarks Commission pretty closely. We have a pre-application consultation, a completeness review for every application with a checklist, our application types which is also on the application form. The public notice requirements was originally nestled under the UDD part of the code. We pulled it out and this now reflects our practice of how we've applied the requirements for public notices and public hearings and when they are required. We've also added information about when Landmarks Commission review and approval is required, and that it does have to happen before UDC. The last item is UDC approval expirations.
- Under Final Approval it does say 'adopting conditions of approval to be addressed at the site plan approval stage.' Maybe adding something that says 'review and approved by staff.' If you're saying Final Approval, you shouldn't be seeing it again. If you wanted to see it again you would just be giving them Initial.
- Are we really saying that the final design and construction details are approved if we're having you or your designee look at it again?
- (Secretary) If they're specific conditions and the Commission says they can be approved administratively. In my mind those are things like 'the underside of the balcony should be treated,...' stuff that can be checked off, not where I have to make discretionary design calls.
- We have a pretty comprehensive application.
- Maybe it's something about final conditions as administered by staff.
- (Secretary) As part of our Policy and Procedure manual update I would like to think about standard conditions to add. I hear the same list: Silva cells, green roofs, balconies, louvers and projections from walls; that way the Commission is working from a consistent list. Hopefully our motions will continue to get clearer. I often times get questions on our motions, they seem clear in the moment when talking about it actively, but a month later, listening to the tape, to get the gist and the motion is not absolutely clear. The goal is to make them as clear and concise as possible: 'the applicant shall do this.' How to phrase our motions and having some basic language to work from to make those clear and concise motions and actions.
- Another paragraph that talks about UDC actions and what they mean to the applicant moving forward.
- With regard to the public notice, to make it clear to the applicant there are other public hearings required for other bodies. Any application that the UDC reviews as a referral from the Plan Commission may also be a public hearing.
- (Secretary) All of those are covered under the Plan Commission section.
- You might just say that there are other applications for projects that might trigger a public hearing as well.
- Maybe just adding a paragraph 'when also reviewed by the Plan Commission.'
- That they have a separate application process and timetable.
- (Secretary) What did we think about Landmarks going first? I think that makes sense for when their review is required, especially if it's in a district or a designated landmark.
- I can remember we reviewed a project on Williamson Street for that little bar there, they did a façade alteration. We wanted to do something with the canopy and Landmarks wanted to do something else and Landmarks won. Any guidance on if there's a conflicting recommendation, who wins.

- They could be advisory or approving, same with UDC.
- (Secretary) Expiration of UDC approvals, 24 months from the date of your final action. We have a 12 month application and if it's a combined application it follows the land use approval from Plan Commission's final action.
- (Secretary) The appeals section was moved under our process section. I don't think any language actually changed there. I reorganized the sentences in this paragraph, so it flows a little bit better.
- (Secretary) Nothing changed with our fees.
- (Secretary) This will all go back to the City Attorney's Office to work into a draft ordinance over the next couple weeks. We'll need to identify an Alder sponsor to get introduced to Common Council, with an introduction sometime in July, hopefully wrapping everything up for Phase 1 in July or early August. Then we'll be looking at updates to our Policy and Procedure manual to match the new draft ordinance, and our Purpose and Intent statement as well.