



Department of Planning & Community & Economic Development

## Planning Division

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**TO:** Plan Commission  
**FROM:** Timothy M. Parks, Planner  
**DATE:** July 10, 2023  
**SUBJECT:** Ordinance ID 77249 and [Substitute] Ordinance ID [77250](#) – Zoning Map Amendments Related to Implementation of the Greater East Towne Area Plan

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The [Greater East Towne Area Plan](#) was adopted by the Common Council on February 22, 2022 by Resolution 22-00144 (ID [68802](#)) to provide land use, urban design, transportation, and open space recommendations to guide redevelopment in the area of the City bounded by E Washington Avenue on the north, Interstate 39/90/94 on the east, the Wisconsin and Southern Railroad corridor on the south, and Mendota Street on the west. The resolution adopting the area plan included direction for staff to implement the recommendations in the plan, which includes a “Proactive Zoning and Official Mapping” map on page 20.

Consistent with the Proactive Zoning and Official Mapping map and the direction provided during adoption of the area plan, the Common Council amended the City’s Official Map to reserve two 66-foot wide areas for future streets in the East Towne Mall area, including an extension of East Springs Drive to Lien Road, and a portion of the future extension of High Crossing Boulevard between East Springs and Zeier Road. See Resolution 23-00372 (ID [77095](#)) for more information on the officially mapped street segments.

Additionally, Ordinance ID 77250 was introduced on April 18, 2023 with sponsorship by Ald. Sabrina Madison, District 17, to proactively rezone two areas surrounding East Towne Mall to RMX (Regional Mixed-Use District) zoning consistent with recommendations in the Greater East Towne Area Plan. For reference purposes, the two areas to be proactively rezoned with this ordinance are referred to as Area 2 and Area 3.

Area 2 encompasses approximately 61.6 acres of land generally bounded by E Washington Avenue on the north, Annamark Drive on the east, East Towne Boulevard on the south, and Parkside Drive on the west. Parcels in Area 2 are currently zoned CC-T (Commercial Corridor–Transitional District). The area is predominantly developed with a variety of one-story retail and service businesses and restaurants with surface parking lots, but also includes a two-story hotel, five financial institutions, and a medical clinic.

Area 3 includes approximately 80.9 acres of land that extends southeast from East Towne Boulevard between Eagan Road and Zeier Road, including the four parcels that comprise East Towne Mall. The southeasterly edge of the area to be rezoned is the centerline of the officially mapped reservation for the extension of East Springs Drive to Lien Road mentioned above. In addition to East Towne Mall proper, Area 3 also includes four pad sites along the south side of East Towne Boulevard, which consist of three restaurants and an auto repair business. Like Area 2, the buildings in Area 3 are served by adjacent surface parking lots.

The proposed RMX zoning will facilitate the mixed-use development recommended in the area plan for both areas, as well as the intensity of development recommended, which includes maximum building heights between eight and twelve stories per the maximum building heights shown on page 33 of the Greater East Towne Area Plan. The allowed uses in the existing CC-T and CC zoning districts and proposed RMX district are similar in many regards, although auto-oriented uses are generally not allowed in RMX zoning whether as a permitted or conditional use. However, it is generally easier to establish residential uses in RMX zoning compared to CC-T or CC: whereas most residential family living uses are permitted in RMX, many of the same residential uses are either not allowed, or are only allowed with conditional use approval in CC-T and CC. The RMX district also contains no lot area or usable open space requirements for residential uses, while CC-T and CC require some combination of both depending on the type of building proposed. Also, the RMX district includes a two-story height minimum for new buildings and additions, whereas the existing districts contain no minimum height.

At the time of introduction, both Areas 2 and 3 were proposed to encompass more land than the areas currently under consideration by the Plan Commission and Common Council. However, it was determined after the areas to be proactively rezoned were initially identified that some of those lands were also included in the Transit-Oriented Development (TOD) zoning overlay district adopted by the Common Council on January 17, 2023 by Ordinance 23-00013 (ID [74703](#)). As a result of also being included in the TOD overlay, some of the land to be zoned RMX could be developed at densities greater than those recommended in the Greater East Towne Area Plan. In particular, new buildings in RMX zoning in the TOD overlay can be developed up to eight (8) stories and 116 feet in height as a permitted use, which would potentially be denser and taller than recommended for some of the property included in the original areas to be proactively rezoned. As such, staff pared Areas 2 and 3 to more accurately reflect the recommended land uses, zoning, and maximum height geographies in the area plan given the boundaries of the TOD overlay.

As with any zoning map amendment, notice of the proposed rezoning of lands within Substitute Ordinance ID 77250 was published in the City's newspaper of record (Wisconsin State Journal) and notices were mailed to the property owners and occupants within 200 feet of the areas subject to the map amendment.

#### *Nonconformities Created by the Amendment*

The proposed zoning map amendment will create zoning nonconformities on the parcels to be rezoned, and the Plan Commission should carefully consider the potential impact on the affected properties when making its recommendation on the zoning map amendment to the Common Council. While the existing uses of many of the subject parcels are allowed in the proposed RMX district, the proposed rezoning will create some use nonconformities as well as various bulk nonconformities that could affect the parcels if approved. In particular, many of the buildings in the areas to be rezoned do not meet the minimum two-story height in the RMX district.

Nonconformities are governed by Subchapter 28M of the Zoning Code, Sections 28.190–28.195, which address nonconforming uses, buildings or structures, and lots, and provide the processes for restoring a nonconforming building or structure and obtaining a certificate of occupancy for a nonconforming use. The purpose of the Nonconformities subchapter is to specify the circumstances and conditions under which these nonconforming uses, buildings, structures, and lots shall be permitted to continue.

In general, a lawful nonconforming use of a building, structure, or land existing on the effective date of the Zoning Code (or an amendment thereto) may be continued although it does not conform to the

provisions of the code, provided that structural repairs or alterations to the building do not exceed 50% of the total assessed value of the building, the nonconforming use is not extended or expanded, and the building does not become and remain vacant or the nonconforming use of the land cease for a continuous period of twelve (12) months. A lawful nonconforming building may be continued although it does not conform to the provisions of the Zoning Code with respect to bulk (setback, open space, floor area ratio, height, parking, etc.) provided that any additions or enlargements shall conform to the provisions of the code as amended. Finally, a lawful nonconforming building existing on the effective date of the Zoning Code that has been damaged or destroyed may generally be restored to the size, location, and use that it had immediately before the damage or destruction occurred if the damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation. The size of the restored building or structure may be larger than the size it was immediately before the damage or destruction if necessary for the building to comply with applicable state or federal requirements (such as the Building Code).

Any person having a legal or equitable interest in a property with a nonconforming use shall obtain a certificate of occupancy from the Zoning Administrator. Such person shall present evidence that the use was a lawful permitted or conditional use at the time it originated and was made nonconforming by the adoption of the Zoning Code or any amendment thereto, or was made nonconforming by the Zoning Code in effect at the time the current code was adopted.

The summary of the nonconformities section above is intended to capture the potential effect of the proposed zoning map amendment and is not intended to supplant the full text of the Zoning Code, case law, or Wisconsin statutes. In addition to City Zoning and state law provisions for nonconforming uses and structures, the creation of nonconforming uses and structures can affect the ability of a property owner to obtain financing, the interest rate for said financing, the insurance policies and coverage that lenders may require a property owner with a nonconforming use or structure to carry, and potential increased cost for those policies.

#### Ordinance ID 77249

At the same time that Ordinance ID 77250 was originally introduced, a second ordinance was introduced to rezone 3801-3859 E Washington Avenue and 3909-3917 Lien Road from CC-T to RMX. This area was referred to as Area 1 by staff and is included in Ordinance ID 77249. Like with some of the properties in the original area of Areas 2 and 3 in ID 77250, the proactive rezoning of all of Area 1 was determined to be unnecessary since the area was included in the TOD overlay and the proposed RMX zoning would have resulted in a density of development inconsistent with the Greater East Towne Area Plan.

As such, staff is recommending that Ordinance ID 77249 be placed on file without prejudice. Public hearing notices have not been provided for this item and it appears in the July 10 agenda for the sole purpose of being placed on file.

#### Recommendation

The Planning Division believes that the proposed RMX zoning will implement the mixed-use development recommended for Areas 2 and 3 and at the densities recommended by the Greater East Towne Area Plan, and recommends that the Plan Commission forward Substitute Ordinance ID 77250, Zoning Map Amendment ID 28.022-00624 (Area 2, CC-T to RMX) and 28.022-00625 (Area 3, CC to RMX), to the Common Council with a recommendation of **approval** following input at the public hearing.

ID # 77250  
Greater East Towne Area Plan  
Proactive Rezoning – Areas 2 & 3  
July 10, 2023  
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Regarding ID 77249, the Planning Division recommends that item be **placed on file without prejudice**, as the proactive rezoning is no longer needed to implement the area plan recommendations.