

Date: March 15, 2011

To: City of Madison Department of Planning and Community and Economic Development

From: Downtown Madison Incorporated ("DMI") Economic Development Committee,
Subcommittee on Zoning Code Rewrite

Subject: Zoning Code Rewrite –Legislative File No. 15932 – Substitute Ordinance

This memorandum presents DMI's most current comments on the substitute ordinance scheduled for a public hearing before the full Council on Tuesday, March 15, 2011 (the "Draft Text"). We note that key portions of the Draft Text, including subchapter 28E-Downtown Districts, are not yet available to the public and we therefore wish to reserve comment on those items.

Below we highlight a number of key concerns in an effort to assist the City in moving towards completion of the Draft Text. While we understand the City is eager to push the Draft Text to the next stage—and while we appreciate the many public meetings and countless hours of staff time that it has taken to advance the project to this point—we are concerned that the Council not rush to adopt the Draft Text as the City's new zoning ordinance until citizens and other stakeholders have had ample time to review a completed draft. **DMI therefore strongly opposes any action by the Council to adopt the Draft Text, or any portion thereof, until the Draft Text has been fully developed.** The new zoning ordinance, once adopted, will shape development of the City for decades to come and DMI believes it is important to proceed with consideration of the Draft Text in a careful, deliberate manner.

PRIORITY COMMENTS

1. Need for Complete Draft Text. We emphasize that our comments to the Draft Text are somewhat tentative as we have not had an opportunity to review key sections of what will ultimately become the City's new zoning ordinance. Further comment will also be necessary when the proposed zoning map is released for public review, as the text and map must be viewed together in order to fully understand the proposed regulatory framework. It is very likely that stakeholders will wish to offer further revisions to the Draft Text once the proposed map is made available.

Of greatest concern to DMI is the treatment of the City's downtown. We note that subchapter 28E-Downtown Districts has not yet been made available for public review and will be reviewed for the first time by the City's Zoning Code Rewrite Advisory Committee at a meeting tomorrow evening. For that reason, we repeat our strong opposition to endorsement of the Draft Text until stakeholders have been given ample opportunity to review the complete document. As the Draft Text moves toward completion, we urge the City to develop a few examples or scenarios—applying the various district regulations to actual sites in different areas of the City—to illustrate how the Draft Text will work in practice.

2. Relationship between Comprehensive Plan and Neighborhood Plans. State law requires that the City's adoption of any new zoning ordinance be consistent with the City's Comprehensive Plan. The Comprehensive Plan, by extension, requires that any duly adopted

neighborhood or special area plan¹ maintain consistency with the Comprehensive Plan, a requirement that has been in place since 2006. There are a number of instances where the Draft Text requires "consistency" or "conformity" (or derivations thereof) with both the Comprehensive Plan and supplemental neighborhood plans. This dual requirement creates unnecessary confusion and a potentially impossible task as many pre-2006 neighborhood plans lack consistency with the Comprehensive Plan.

In the course of developing the Draft Text, the Plan Commission revised Section 28.183(6), which deals with conditional uses, to address this very concern based on the City Attorney's advice that "it would be best if the Zoning Code did not include a conditional use standard that could be interpreted to require a project to comply with the detailed recommendations in an adopted [neighborhood] plan."² Accordingly, the requirement for conformity with both the Comprehensive Plan and neighborhood plans was removed and advisory language was inserted noting that the Plan Commission would not approve a conditional use without "due consideration" of the Comprehensive Plan and supplemental neighborhood plans. We request that other areas of the Draft Text be revised in a similar manner to eliminate potentially conflicting requirements.

3. Maintaining Flexibility for Planned Development Districts (PDDs). As defined in the Draft Text, PDDs are "established to provide a voluntary regulatory framework as a means to *facilitate* the development of land in an integrated and *innovative* fashion, to *allow for flexibility* in site design, and to *encourage* development that is sensitive to environmental, cultural, and economic considerations."³ [emphasis added]. The PDD process requires a zoning map amendment as it is designed to be forward-looking to allow for desirable projects that are currently too innovative or complex to adequately capture in today's zoning districts. Accordingly, the PDD process is, and must be, quite rigorous and subjects potential projects to multiple levels of review including, but not limited to, City staff, the Plan Commission, affected neighborhood groups and the Common Council. The Draft Text provides for all of the foregoing. Unfortunately, the Draft Text then eliminates the discretion of the various review committees by placing absolute restrictions on such items as project height in Downtown Districts and Open Space requirements. We request that the PDD be drafted without such restrictions and truly allow future city planners, commission members and neighborhoods to contemplate developments that may lie beyond current conventional thinking.

SOME GENERAL COMMENTS

4. Enhanced Sustainability Concepts. DMI would like the Draft Text to incorporate more of the concepts for sustainability outlined in the City of Madison Sustainability Plan (the "Sustainability Plan"). The City spent a great deal of time and energy creating a useful and progressive blueprint for sustainable energy and design but we believe many of these concepts have not been sufficiently incorporated into the Draft Text. Moreover, the Draft Text, in some instances, promotes the opposite of sustainability. By way of example—and despite the current presence of multiple quarries and the planned future annexation of hundreds of acres of agricultural land

¹ To avoid unnecessary repetition, the term "neighborhood plan" also encompasses neighborhood development plans, special area plans, design guidelines and other similar documents adopted as supplements to the Comprehensive Plan.

² See Relationships between the Comprehensive Plan, Neighborhood Plans and the Zoning Code, City's Planning Division Staff memorandum to the City's Plan Commission dated November 15, 2010.

³ Draft Text § 28.097(1) Planned Development District: Statement of Purpose.

surrounding the City—the Draft Text no longer allows quarries within the City limits.⁴ This omission has several consequences to the City, namely (i) increased transportation costs for infrastructure projects within the City where it will become necessary to transport material from quarries outside City limits; and (ii) promotion of urban sprawl as sites that could have been quarried and then redeveloped will now remain unbuildable (e.g. Target site in Fitchburg). We request that the Draft Text be revised to adopt more of the City's Sustainability Plan.

5. Reduction in Maximum Surface Parking Allowed for General Office, Medical Office and Retail. The Draft Text decreases the maximum number of surface parking stalls allowed for general office, medical/dental office, and retail use from 1 parking stall per 200 sq. ft. of gross floor area to 1 parking stall per 250 sq. ft of gross floor area. On a 10,000 square foot building, this would reduce the maximum allowable parking from 50 spaces to 40 spaces. A conditional use permit would be required to exceed this new maximum. Structured or underground parking would be excluded from this maximum. Quite simply this reduction in parking kills development for many of these uses within the City. We request the parking maximums be restored to 1 parking stall per 200 sq. ft. at a minimum and recognition by the City that developer's have no monetary incentive to build 1 parking stall more than is required to operate a successful business.

6. Additional Items Requiring Further Review and Discussion. In addition to the larger themes referenced-above, DMI has begun to identify multiple items within the Draft Text requiring further discussion. Such items include, but are not limited to, concerns regarding: (i) inclusion of elevator access to roof decks and screening for mechanical devices as items not excluded from height regulations in § 28.134(2) of the Draft Text; (ii) inclusion of a maximum building size (e.g. 28.065(5)(a) for Mixed Use Center District limits buildings to 25,000 sq. ft.) without consideration for the size of the site; (iii) architectural stylistic recommendations that need reconsideration; (iv) side yard setbacks for new buildings (see 28.063 Neighborhood Mixed-Use District) where an “abutting building” has a non-compliant sidewall window; (v) build-to-lines and urban front yard setbacks (e.g. § 28.074); (vi) lack of clarity on what a "Master Plan" means (see 28.065 Mixed Use Center District); (vii) minimums for structured parking in MXC Districts; (viii) Section 28.065(7)'s mixed use requirements and how that would be enforced years after development completion; (ix) the residential point system requiring an average bedroom score of 1.25; and (x) maximum building widths described in § 28.078(4) without consideration to parcel size. We request additional time for the public to continue reviewing the recently released Draft Text and the yet-to-be-released Downtown Districts in order to provide more thorough comments.

Conclusion

While DMI believes the Draft Text *has the potential* to be a significant improvement over the current zoning code, and will hopefully provide a more efficient and predictable template for the City's current and future land-use objectives, we have concerns with the current Draft Text as noted above and **must withhold any endorsement pending completion, and adequate time for public reflection and comment, of the draft downtown districts.**

⁴ It must be noted that City Staff recommended that quarries be included as a conditional use in Agricultural Districts but the suggestion was rejected by the Plan Commission.