



PREPARED FOR THE PLAN COMMISSION

Proposal: Zoning Text Amendment

Legistar File ID #: [90552](#) (TOD 3-4 Units, Auto-Oriented Uses, & Drive Through Building Design)

Prepared By: Zoning and Planning Staff

[90552](#) – This zoning code amendment includes changes to the Transit Oriented Development (TOD) Overlay District to:

- allow three- and four-unit buildings in all residential base zoning districts where the use is not already allowed;
- prohibit standalone surface private parking lots, car washes, auto sales and rental businesses; and
- require new drive throughs to be in or on buildings that are at least three stories and that cover at least 60% of lot area.

Three and Four-Unit Buildings

When Council approved the TOD Overlay District in January 2023 ([74703](#)), it included allowing additional housing units in the TOD Overlay beyond the base zoning district, including allowing two-family dwellings in all zoning districts where single-family dwellings were allowed. In July of this year, Council approved a code change to allow as a permitted use two-family dwellings citywide in all zoning districts where single-family dwellings were allowed ([88736](#)). Due to that change, the TOD Overlay district no longer affords an increase in allowable development types in these lower density residential zoning districts. This proposal would allow three- and four-unit buildings as a permitted use in TOD in base zoning districts that now allow up to two-family dwellings. One goal of the TOD Overlay is to allow additional housing near high frequency transit service in order to provide greater transit access to jobs, education, and services, providing opportunities to reduce household costs and community congestion, pollution, injuries, and deaths created by vehicle use.

Prohibit Some Auto-Oriented Uses

When the TOD Overlay was first developed, prohibiting some auto sales was considered in discussions by Plan Commission and policy makers. Ultimately, no uses were specifically prohibited in the TOD Overlay. However, in the almost three years since the TOD Overlay was approved, some new auto-oriented uses have been approved or developed in ways that technically meet the standards of the overlay district, but which are inconsistent with the transit- and pedestrian-oriented development intent. This code change proposes prohibiting three uses in the TOD: standalone surface private parking lots, car washes, and auto sales and rental.

Parking lots that serve another use on the property such as an office, restaurant, or apartments are not considered standalone principal uses. They would continue to be allowed as part of those office, restaurant, or apartment uses. Existing, legally permitted standalone surface private parking lots, car washes, and auto sales and rental uses located within the TOD Overlay would become lawful nonconforming uses, which means that they can continue to operate in their current location, as long as they don't cease operations for 12 months or more. They also may not complete structural repairs or structural alterations to the building or

structure which exceed 50% of the total assessed value of the building or structure. Lastly, they may not be extended or expanded onto lots where the use does not already exist. (MGO 28.191)

Drive Through Building Design

The initial TOD Overlay included some design requirements for drive throughs ([74703](#)). In May 2024, a new design requirement was added that drive throughs have to be fully under an occupiable conditioned story ([81965](#)). A 50% building addition threshold was added to require full compliance with TOD auto infrastructure requirements, including drive throughs. Establishments with drive throughs citywide were also required to provide pedestrian access to the establishment. Lastly, the 2024 amendment clarified that, citywide, existing nonconforming site conditions can remain but cannot be made more nonconforming.

Since the May 2024 code change, new drive throughs that meet the requirements of the TOD Overlay have been proposed and approved with building and site designs that technically meet the overlay district standards, but do not advance the intended transit- and pedestrian-oriented design of the overlay district. As a result, the proposed amendment includes two new design requirements for new drive throughs. New drive throughs must be in or on buildings that are at least three stories and that cover at least 60% of lot area. It is anticipated that these design requirements will result in the more intensive development that the overlay intends, while continuing to allow drive throughs as an allowed use.

Existing buildings that have a drive through window would be allowed to continue to have this nonconforming site condition as long as nothing is changed to increase the window's nonconformity with the code. However, the new requirements being proposed for drive-through windows will apply if a property or business owner does any of the following:

- Adds a new drive-through window;
- Adds a new drive-through window or moves an existing drive-through window to a different location on an existing building;
- Expands the principal building on the lot by more than 50% of the building's floor area; or
- Creates a new principal building with drive-through window.

Staff supports this code amendment.

Proposed Alternate

Allow Auto Rental Use in TOD

[90552, Figueroa Cole & Ochowicz proposal](#) – In this proposal, auto rental use would continue to be allowed within the TOD Overlay, while auto sales use would continue to be a prohibited use in the TOD Overlay. The purpose of the proposed amendment is to continue to allow auto rental close to high-quality transit service in order to support car-free and car-light living.

The resulting text to implement this proposal separates "Auto Sales & Rental" use into two uses - "Auto Sales" and "Auto Rental" in all applicable zoning district use tables. MGO Secs. 28.061, 28.072, 28.141, and 28.151 are proposed to be changed to be consistent with the use separation and wording. A new definition for auto

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rental is created in 28.211. Within the newly created 28.104 (6), regarding prohibited principal uses in the TOD Overlay, auto rental would be stricken from the text.

Staff notes that the primary distinction between these uses is for how long the automobiles are being removed from the facility or lot from which they are obtained. Otherwise, auto sales and auto rental uses can have generally similar land use impacts and primarily entail the storage and maintenance of vehicles for off-site usage. Auto rental will be subject to all TOD Overlay district standards regarding site design.

Staff supports this proposal.