



PREPARED FOR THE COMMON COUNCIL

**Proposal:** Zoning Text Amendment

**Legistar File ID #:** [63902](#) – Housing Density and Conditional Use Thresholds

**Prepared By:** Planning and Zoning Staff

On March 30, 2021, the Common Council will be considering two sets of ordinance changes related to housing density and conditional use threshold modifications in the Zoning Code. The original staff report can be read [here](#). As described below, the first is a [substitute ordinance](#) that reflects the recommendation of the Plan Commission. The second is an [alternate ordinance](#) that proposes and retains conditional use review for the vast majority of stand-alone residential buildings in select mixed-use districts.

Staff supports the *substitute ordinance*, as recommended by the Plan Commission.

**Updates and Analysis**

**Substitute Ordinance**

Following a unanimous recommendation for adoption by the Housing Strategy Committee on February 25, the Plan Commission on March 22 had a lengthy discussion and unanimously recommended that the Common Council approve the proposed ordinances with amendments as shown in the [substitute](#).

A video link to the 4+ hour coverage of this item can be found here, with time points noted below.

Video Link: [March 22 Plan Commission Meeting](#)

- 1:52:45 – Start of item and new staff presentation
- 2:24:30 – Public comment
- 3:18:20 – Mayor’s comments
- 3:28:00 – Questions for registrants and staff
- 5:15:50 – Motions, deliberation, action
- 5:58:30 – End of item

The substitute includes two changes made in response to concerns that the originally proposed changes to the ordinance would unduly support purely residential uses along the City’s mixed-use zoning districts.

- 1) The most significant change recommended by the Plan Commission was to decrease the number of dwelling units in purely residential buildings that could be constructed as a *permitted use* in the three relevant mixed-use districts, NMX, TSS, and CC-T.

Zoning District	Acres in District % of City	# Units Allowed in Residential Building as Permitted Use		
		Current Code	Original Proposal	Substitute
NMX	104 Acres, 0.2%	4	24	12
TSS	99 Acres, 0.2%	0	48	24
CCT	685 Acres, 1.6%	0	60	36

- 2) The second change in the substitute ordinance shifts a threshold within the CC-T District to require more ground floor commercial frontage in mixed-use buildings that can proceed as a permitted use. Specifically, the original proposal was for any mixed-use building with under 25% ground floor commercial frontage to require conditional use approval. The substitute increases that to 50%.

While recognizing that when compared to the original ordinance, the substitute will not allow as much purely residential development to move forward as a permitted use, it will still allow for smaller and some mid-scale multi-family residential development to occur as a permitted use along mixed-use corridors, including those with the most redevelopment potential.

The three zoning districts impacted by the substitute – NMX, TSS, and CC-T - comprise approximately 2% of the City's total land area, and have accommodated over 25% of the approved new housing units over the last five years. Located in areas generally well-served by transit and other amenities, the land in these three zoning districts still holds substantial capacity for (re)development in the coming decades.

Staff supports the substitute ordinance, and believes that the zoning changes therein provide easier paths to the creation of more housing. The changes especially provide new, meaningful opportunities for small-scale developers to acquire individual properties for the construction of housing without having to engage in the conditional use process. The main difference between this and the proposed Alternate ordinance, described below, is that the substitute would allow smaller scale development to proceed without having to create small ground-floor commercial spaces that may not be leasable. Staff note that developers focused on larger-scale buildings will still move forward with proposals involving conditional use review, including scrutiny on the incorporation of adequately sized commercial spaces where it is recommended in adopted plans.

### **Alternate Ordinance**

An [alternate ordinance](#), proposed on March 25, includes only a few changes to the text, but would have significant impacts on the purpose of the proposed changes. By reinstating conditional use review for any residential building, regardless of size, along arterial or collector streets, the alternate would remove **90%** of the land area (88% of the parcels) within these three mixed-use districts. This equates to over 800 acres and approximately 1,200 parcels from eligibility for purely residential buildings as permitted uses, essentially removing the efficacy of a core element of the ordinance change.

If the alternate were to be adopted, nearly all of the future development of multi-family housing in mixed-use districts would require discretionary review as a conditional use, unless buildings include a certain amount of ground floor commercial space. In fact, opportunities to pursue small and some mid-scale purely residential buildings in mixed-use districts would be limited to a total of 87 acres of land across the City (an area roughly half the size of Warner Park). Staff believes that this change would remove most of the intended advantages for smaller-scale developers – those who wish to develop buildings at a scale that simply cannot absorb long-term costs of vacant commercial spaces – and could result in a slower pace of housing creation.

### **Recommendation**

While understanding the rationale for the alternate, staff supports and recommends that the Common Council adopt the substitute ordinance as was unanimously recommended by the Plan Commission.