



## Legislation Details (With Text)

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**File #:** 21-0053B      **Version:** 1  
**Type:** Ordinance      **Status:** Passed  
**File created:** 1/20/2021      **In control:** City Council  
**On agenda:** 2/2/2021      **Final action:** 2/2/2021  
**Title:** Pass the ordinance amending Chapter 3 (Administration and Enforcement) and Chapter 4 (Planned Unit Developments) of Title 6 (Zoning Regulations) related to deviations, zoning decisions by the City Council and PUD revocations - PZC 20-1-122

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Ordinance, 2. PZC Meeting Minutes 1-6-21 DRAFT

Date	Ver.	Action By	Action	Result
2/2/2021	1	City Council	passed as amended	Pass

### CITY COUNCIL AGENDA ITEM

**ACTION REQUESTED:**

Pass the ordinance amending Chapter 3 (Administration and Enforcement) and Chapter 4 (Planned Unit Developments) of Title 6 (Zoning Regulations) related to deviations, zoning decisions by the City Council and PUD revocations - PZC 20-1-122

**DEPARTMENT:** Transportation, Engineering and Development

**SUBMITTED BY:** Allison Laff, AICP, Deputy Director

**BOARD/COMMISSION REVIEW:**

The Planning and Zoning Commission (PZC) conducted the public hearing regarding PZC 20-1-122 on January 6, 2021. One public comment expressing opposition to the proposed amendment was read into the record; there were no other speakers on this item. Following limited discussion, the PZC closed the public hearing and recommended approval of PZC 20-1-122 (vote 6-0). Staff concurs.

**BACKGROUND:**

At its December 1, 2020 meeting, the City Council considered a request by Shorewood Development Group, LLC to amend the B2 zoning district regulations to permit self-storage facilities in the B2 district, subject to certain conditions. The City Council did not support the requested amendment finding that it was too broad and could result in storage facilities being located at several B2 properties counter to the commercial intent of this district.

However, during its discussions, the City Council noted no specific concerns with the storage facility proposed at the Market Meadows shopping center based on the center's high vacancy rates. The City Council accordingly directed staff to investigate other zoning approaches that could be used to

permit Market Meadows to move forward with the storage facility request without having broader impacts on the B2 zoning district.

The City Council held the first reading on the proposed ordinance amendments on January 19, 2021. There were no public speakers on this item. Staff recommends that City Council pass the proposed ordinance on February 2, 2021.

## **DISCUSSION:**

### ***Use Deviations in PUDs***

During its discussion, the City Council inquired why a variance could not be granted to permit a use which is neither a permitted nor conditional use in a property's underlying zoning district. Staff clarified that the existing Code specifically prohibits use variances. However, while exploring options to accommodate the processing of requests such as the storage facility for Market Meadows, staff determined that it may be appropriate to amend the Code to permit use deviations to be sought in PUDs if specific qualifying criteria are met.

As proposed, the amendment will permit a petitioner to request a use deviation in a PUD if the following can be demonstrated:

- The subject property at which the use deviation is requested presents unique and unusual circumstances;
- The requested use deviation will not have an adverse impact on the current uses in the PUD;
- The requested use will be incidental to the principal use of the PUD (i.e., the PUD will continue to be primarily utilized for uses allowed in its underlying zoning district); and
- One or more of the following criteria are present:
  - The requested use would achieve an adopted land use goal.
  - The requested use would satisfy an unmet market need.
  - The requested use will likely benefit existing uses in the PUD.
  - The requested use is appropriate due to other circumstances or conditions specific to the PUD, including but not limited to, extended or high rate of vacancies and changing market conditions.

Staff finds that the proposed amendment would provide the City Council with flexibility to approve/deny a use deviation request in limited circumstances without permanently changing the characteristics of the underlying zoning district. If the proposed amendment is approved, any future requests for use deviations in a PUD would be subject to a public hearing before the PZC with a final determination by the City Council.

### ***Other Proposed Amendments***

Two additional amendments that propose to address current code deficiencies identified by staff, as further described below.

### ***PUD Revocation***

The Code provides the City or a property owner with the ability to seek revocation of a PUD if either final platting or construction has not begun within two years of approval. As currently written, if a PUD is revoked, the underlying zoning designation automatically takes effect. In some cases, especially where the PUD has been in place for a significant period of time, the underlying zoning district may no longer be compatible with either the adopted master plan or with the manner in which the surrounding area has developed.

In conjunction with a petition for revocation of a PUD, a property owner may seek establishment of a new PUD or request rezoning of their property in conjunction with the request to revoke an existing PUD. In the event that the property owner seeks a revocation of a PUD only (without seeking a new PUD or rezoning of the subject property), the proposed amendment provides a process by which the City Council may, at its discretion, direct the PZC to conduct a public hearing to determine if the underlying zoning district in which the parcel of land is located remains appropriate for said parcel following revocation. The recommendation of the PZC shall be submitted to the City Council for consideration in conjunction with the request to revoke the approved PUD. If the City Council determines that the underlying zoning is no longer appropriate for the parcel of land, the City Council may deny the request for revocation of the PUD.

### **Final Action by City Council**

Section 6-3-3:2.4 of the Code pertains to the decisions and findings of the City Council as they relate to the zoning requests. The City's legal counsel has advised that the first and second provisions of this Section are in conflict and has requested that the second provision be deleted.

### **Council Action**

The City Council held the first reading on the proposed ordinance amendments on January 19, 2021. There were no public speakers on this item. Staff recommends that City Council pass the proposed ordinance on February 2, 2021.

### **FISCAL IMPACT:**

N/A