



TO: Denver Planning Board
FROM: Tina Axelrad, Principal City Planner
DATE: August 14, 2013
RE: Denver Revised Municipal Code Amendment Regarding Protected Districts

Overview of Amendment and CPD Recommendation

Unique for the Denver Planning Board, this is a zoning-related amendment not to the text of the Denver Zoning Code, but to the text of a provision in the Denver Revised Municipal Code ("DRMC") that establishes special rules for lands retaining Former Chapter 59 zoning. The City Council established these DRMC rules when they adopted the Denver Zoning Code in 2010. Specifically, DRMC Section 59-2, establishes the new Denver Zoning Code as the city's official zoning code, establishes the old zoning code as "Former Chapter 59," and makes clear that lands with Former Chapter 59 zoning have to follow all the standards and procedures in Former Chapter 59.

This amendment will clarify how certain zoning rules apply when lands with Former Chapter 59 zoning are mapped next to "protected (residential zone) districts" under the Denver Zoning Code. The amendment will make clear that lands that are in "protected districts" under the Denver Zoning Code are included in the term "protected districts" used in Former Chapter 59. In this way, the amendment assures the continuation of building height and bulk limitations applied to lands with Former Chapter 59 zoning when they are mapped next to lower-intensity Denver Zoning Code residential zone districts.

CPD staff recommends that the Planning Board recommend to the City Council approval of this DRMC amendment as reasonably necessary for the public health, safety and general welfare, as in conformance with the City's Comprehensive Plan 2000, and as assuring uniformity of zoning regulations within each zone district.

Purpose and Summary of DRMC Amendment

The purpose of this amendment is to ensure the continuation of building height and bulk limitations on new development under Former Chapter 59 zoning when located next to Denver Zoning Code "protected (residential zone) districts."

The general provisions governing development on lands retaining Former Chapter 59 zoning are found in the DRMC, Section 59-2. The key provision is found in Section 59-2(b), which states that for lands retaining Former Chapter zoning, "all provisions of Former Chapter 59, including procedures, shall apply." The intent of DRMC, Section 59-2(b), is to maintain the status quo for lands that retained Former Chapter 59 zoning; in other words, not to change in any substantial way how zoning works for these lands.

One challenge in maintaining the status quo is what happens when land with Former Chapter 59 zoning is mapped next to land with Denver Zoning Code zoning? Is the status quo established by Former Chapter 59 maintained in that circumstance? In the vast majority of instances, the answer is "yes." Recently, however, a gap in maintaining the status quo was discovered through zoning review of a project on land with Former Chapter 59 zoning. Contrary to maintaining the status quo, the application of Former Chapter 59 zoning in that case revealed a change in the resulting zoning entitlement. The gap occurs when land in zone districts defined as "controlled" in Former Chapter 59 is mapped next to land rezoned to lower-intensity residential zone districts under the Denver Zoning Code. Because "protected districts" as defined in the Former Chapter 59 do not include "protected districts" as defined in the Denver Zoning Code, building height and bulk protections for those remapped lower-intensity residential zones are not triggered when new development occurs in an adjacent Former Chapter 59 "controlled district." This amendment fixes that oversight and creates a new rule in the DRMC that links the two codes together in this specific mapping circumstance.

Specifically, this amendment will revise DRMC, Section 59-2, to add a new subsection "(c)" shown as underlined red text below:

(a) Chapter 59 of the Denver Revised Municipal Code as filed with the Denver City Clerk on 20th day of May 2010 at City Clerk Filing No, 10-512, ("Former Chapter 59"), shall remain in full force and effect for any land not re-zoned to zone districts in the Denver Zoning Code. No changes shall be enacted to the provisions of the Former Chapter 59 after June 25, 2010.

(b) For lands retaining their zoning designation under the Former Chapter 59, including land zoned Planned Unit Development (PUD), land zoned with waivers and conditions and land subject to a Planned Building Group Site Plan, all provisions of the Former Chapter 59, including procedures, shall apply.

(c) For purposes of applying the limitations on bulk planes and building heights in Section 59-96 of the Former Chapter 59, the "protected districts" identified therein shall also include the zone districts defined as "protected districts" in Section 13-3 of the Denver Zoning Code.

Criteria for Review and CPD Recommendation

The criteria for review of a proposed amendment to the DRMC are found in the City Charter, Section 3.2.9, which authorizes the City Council to adopt and amend zoning regulations and the official zoning map for the purposes of "promoting health, safety, morals or the general welfare of the community." In adopting or amending the city's zoning relations or map, such council action must be "in accordance with a Comprehensive Plan" prepared by CPD and adopted by City Council. Finally, all zoning regulations must be "uniform for each class or kind of buildings through each [zone] district, but the regulations in one District may differ from those in other Districts."

A. The DRMC Amendment is Consistent with the City's Adopted Comprehensive Plan

The DRMC amendment regarding "protected districts" is consistent with the city's adopted plans and policies in the following ways:

Denver Comprehensive Plan 2000:
Land Use

- Strategy 2-A: (*paraphrased*) [P]roposed revisions should ensure that the Denver Zoning Ordinance will be flexible and accommodating of current and future land use needs...
- Strategy 3-B: "Encourage quality infill development that is consistent with the character of surrounding neighborhoods...."

This amendment is consistent with the city's adopted plans because it continues the City Council's intent to maintain the status quo of zoning entitlement and limitations on all lands retaining Former Chapter 59 zoning. This amendment keeps in place the same building height and bulk limitations that apply to development in "controlled districts" under Former Chapter 59, when that development is located next to lower-intensity residential zone districts that are "protected districts" under the Denver Zoning Code.

B. The DRMC Amendment Furthers the Public Health, Safety, and General Welfare

The DRMC amendment is reasonably necessary for the public health, safety, and general welfare because it assures the continuation of zoning protections for lower-intensity residential zone districts, thereby furthering Comprehensive Plan objectives to encourage context-sensitive infill development.

C. The DRMC Amendment Results in Regulations that are Uniform within Each Zone District

The DRMC amendment will result in uniformity and consistency of treatment of development within each zone district, whether the zone district is a carry-over from Former Chapter 59 or a more recent Denver Zoning Code district. This amendment ensures essentially the same building height and bulk limitations related to "protected districts" apply whether development occurs under the Former Chapter 59 or the Denver Zoning Code.

Public Outreach and Comments

Below is a summary of the public outreach for this amendment.

- *August 6, 2013*: Notified by email all Registered Neighborhood Organizations about the Planning Board hearing on August 21, 2013.
- *August 14, 2013*: Posted a copy of the redlined code text changes and this CPD staff report on the CPD website for public review.

As of the time of this staff report, written support of the DRMC amendment has been received from Inter-Neighborhood Cooperation (INC). The INC comment is attached to this staff report.

CPD Recommendation

Based on the criteria for review as described above, CPD recommends that the Planning Board recommend **approval** of this DRMC amendment to the City Council.

From: Axelrad, Tina R. - Community Planning and Development
Sent: Tuesday, August 13, 2013 4:02 PM
To: Axelrad, Tina R. - Community Planning and Development
Subject: NOTIFICATION OF DENVER REVISED MUNICIPAL CODE, CHAPTER 59 TEXT AMENDMENT
PLANNING BOARD PUBLIC HEARING

From: Michael Henry [<mailto:michaelhenry824@comcast.net>]
Sent: Wednesday, August 07, 2013 9:48 PM
To: 'Gertie Grant'
Cc: Axelrad, Tina R. - Community Planning and Development; Pyle, Michelle A.- Community Planning and Development; Robb, Jeanne - City Council Dist. #10
Subject: RE: Fwd: NOTIFICATION OF DENVER REVISED MUNICIPAL CODE, CHAPTER 59 TEXT AMENDMENT PLANNING BOARD PUBLIC HEARING

Gertie - we had quite a discussion at the June ZAP committee regarding a specific issue in the Jefferson Park neighborhood (I don't recall if you attended in June), resulting in the following motion, which was adopted by the INC Delegation in July:

MOTION 1 FROM ZONING & PLANNING COMMITTEE

Inter-Neighborhood Cooperation supports the appeal to the Board of Adjustment for Zoning Appeals by Jefferson Park United Neighbors (JPUN) of the decision by the Denver Zoning Administration to permit a new development at 2100 Eliot Street which, if built, would violate the bulk-plane protections given to adjacent R-2 property by the zoning code in effect under the Chapter 59 Zoning Code in effect until the new zoning code was passed in June 2010. Unclear language in the new code did not clarify the implied and necessary coordination between the adjacent zone districts.

INC should also communicate to Community Planning and Development, City Council and the Mayor's Office that the unintended error in the new zoning code which implies but does not effectively define the bulk-plane protections given to land in certain lower-density zone districts within 175 feet of a higher-density zone district should be corrected by an amendment to the zoning code as soon as possible.