



DENVER
THE MILE HIGH CITY

Community Planning and Development
Planning Services
Plan Implementation

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TO: Land Use, Transportation & Infrastructure Committee
FROM: Tina Axelrad, Principal City Planner
DATE: November 27, 2013
RE: [REVISED] Amendment to Denver Revised Municipal Code Regarding Protected Districts

Overview of [REVISED] Amendment and CPD Recommendation

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”), DRMC Section 59-2, which establishes special rules for lands retaining Former Chapter 59 zoning. At its regular September 17, 2013, meeting, the LUTI Committee considered this amendment and recommended to move it out of committee for the full City Council’s consideration.

At the time of LUTI’s September action, the amendment addressed only the continuation of building height and bulk limitations on lands with Former Chapter 59 zoning, when such lands are mapped next to lower-intensity Denver Zoning Code residential zone districts (e.g., when development occurs on R-MU-20 zoned land located next to a U-SU-C zone district). In more technical terms, the amendment assured that residential zone districts that are currently “protected districts” under the Denver Zoning Code will also be “protected districts” when development occurs under Former Chapter 59.

After LUTI’s action, CPD Staff and the City Attorney’s Office determined that the pending DRMC amendment should be revised to capture additional changes necessary to assure that other, similar zoning protections found in Former Chapter 59 would continue. The revisions to the pending amendment specifically continue the following additional protections for residential zone districts mapped under the Denver Zoning Code:

1. Limitations on the location and operation of outdoor eating/serving areas established in the R-4-X, B-2, B-3, B-A-2, B-A-4, CCN, I-0, I-1, I-2, C-MU, R-MU, and T-MU zone districts in Former Chapter 59;
2. Limitations on the location of outdoor dog runs within 20 feet of a habitable residential structure, where “animal sales, service, or care, household pets only” uses are allowed under Former Chapter 59;
3. Application of a 5-foot side setback (rather than a 0 side setback) standard in the R-MU, C-MU, and T-MU zone districts in Former Chapter 59, when development in these mixed-use zones abuts a SU or TU zone district; and
4. Application of a variety of residential protections applicable to specific uses allowed under Former Chapter 59 when such uses are established abutting or adjacent to a residential zone district. These protections include minimum separation, greater setbacks, additional landscaping and buffering, more process)

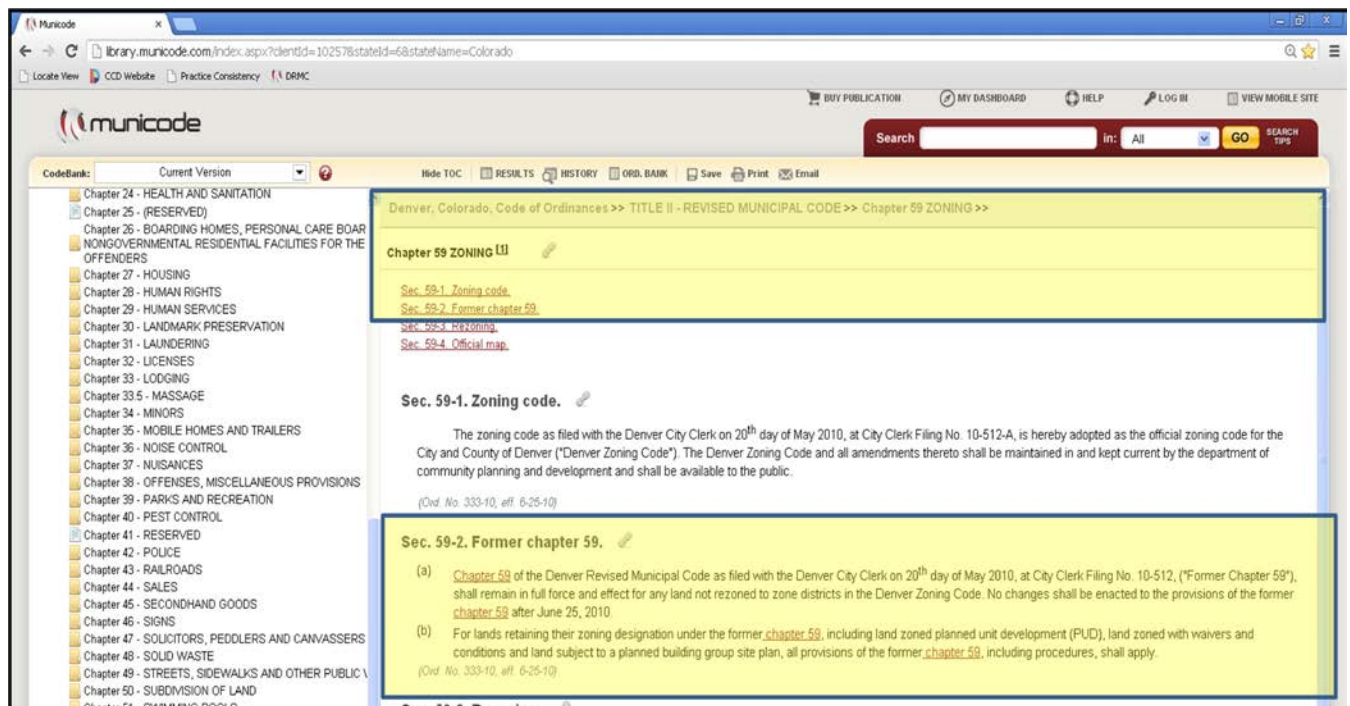
CPD staff recommends that the LUTI Committee send this amendment, as revised, to the full City Council for its consideration and final action. CPD staff recommends approval of this

amendment because it is reasonably necessary for the public health, safety and general welfare, is in conformance with the City's Comprehensive Plan 2000, and assures 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 limitations on new development under Former Chapter 59 zoning when located next to Denver Zoning Code "protected districts" and "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.

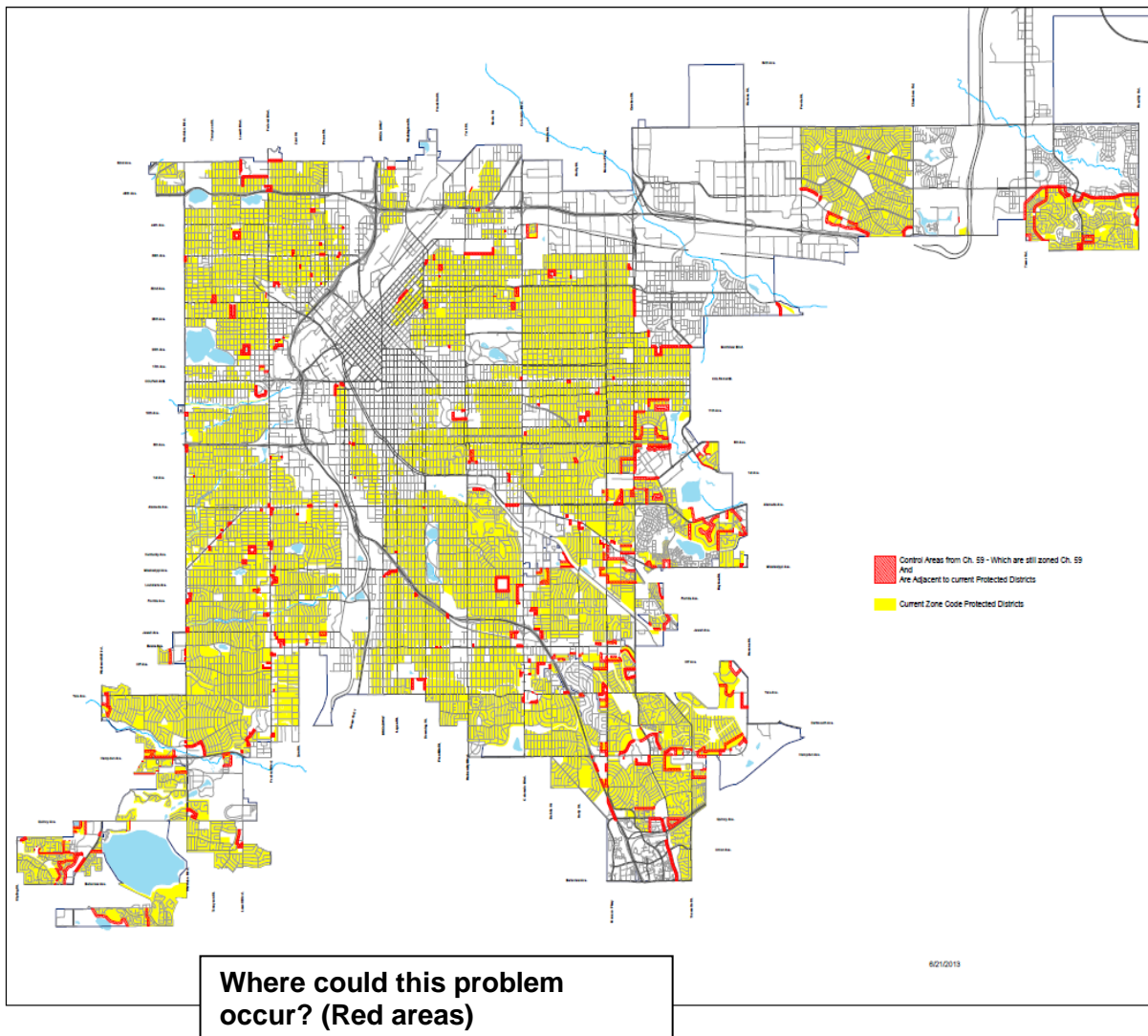


DRMC, Sec. 59-2, Relevant Provisions

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. Upon further review, it was discovered that there

were additional gaps in the protections afforded lower-intensity residential zones that also changed the resulting zoning entitlement for lands retaining Former Chapter 59 zoning.

One gap, which LUTI considered at its September 17th meeting, occurs when land in zone districts defined as “controlled” in Former Chapter 59 (e.g., R-MU-20) is mapped next to land rezoned to lower-intensity residential zone districts under the Denver Zoning Code (e.g., U-SU-C). “Protected districts” in Former Chapter 59 do not include residential zone districts protected under the Denver Zoning Code (because they didn’t exist when Former Chapter 59 was the official zoning code!). Consequently, building height and bulk protections for the lower-intensity residential zones (e.g., U-SU-C) are not triggered when new development occurs in the adjacent Former Chapter 59 “controlled district” (e.g., R-MU-20). The map below shows where in the City of Denver this mapping situation occurs. Areas on the map shown in red indicate where development under the Former Chapter 59 could occur *without* triggering the protective height and bulk standards for adjacent DZC zoned residential lands (shown on map in yellow).



After LUTI's September 17th meeting, CPD Staff and the City Attorney's Office identified additional changes necessary to assure that other, similar zoning protections found in Former Chapter 59 would continue when lands with Former Chapter 59 zoning are mapped next to lower-intensity Denver Zoning Code residential zone districts. The amendment, as revised, specifically continues the following additional protections for adjacent lower-intensity, residential zone districts under the Denver Zoning Code:

1. Limitations on the location and operation of outdoor eating/serving areas established in the R-4-X, B-2, B-3, B-A-2, B-A-4, CCN, I-0, I-1, and I-2 zone districts in Former Chapter 59 (use limitation "L1" on allowed "eating place" uses in the above cited zone districts).
2. Limitations on the location and operation of unenclosed outdoor eating/serving areas established in the R-MU, C-MU, and T-MU zone districts (Sections 59-302(4)b.1 and 2 of Former Chapter 59).
3. Limitations on the location of outdoor dog runs within 20 feet of a habitable residential structure, where "animal sales, service, or care, household pets only" uses are allowed under Former Chapter 59 (Section 59-2(16) of the Former Chapter 59).
4. Application of a 5-foot side setback (rather than a 0 side setback) standard in the R-MU, C-MU, and T-MU zone districts in Former Chapter 59, when development in these mixed-use zones abuts a SU or TU zone district (Section 59-312(3) of the Former Chapter 59).
5. Various protections for residentially zoned properties located next to or near newly established land uses with the potential for adverse impacts on the residentially zoned properties. For example: (a) limits on hours of operation for drive-throughs located within 85 feet of a residentially zoned lot in Main Street zones under Former Chapter 59; or (b) requirements for additional landscaping and screening when a telecommunication tower permitted under Former Chapter 59 is located within 200 feet of a residential zone district; or (c) requirements for a minimum 500-foot separation between an adult bookstore use permitted under Former Chapter 59 and any residential zone district.

This amendment fixes the oversights and creates new rules in the DRMC that links the two codes together to address the identified gaps in protection. Specifically, this amendment will revise DRMC, Section 59-2, to add new subsections "(c)" through "(g)" shown as underlined red text below (*note*: paragraphs (d) through (h) are the new provisions added to the amendment since the September 17th LUTI meeting):

- (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.

(d) For purposes of applying the “L1” limitation on “eating place” primary uses applicable in the R-4-X, B-2, B-3, B-A-2, B-A-4, CCN, I-0, I-1, and I-2 zone districts in Former Chapter 59, the residential districts identified in the L1 limitation shall also include the zone districts defined as “protected districts” in Section 13-3 of the Denver Zoning Code.

(e) For purposes of applying the “exception to use enclosure requirement” for Mixed Use Zone Districts (C-MU, R-MU, and T-MU zones) in Sections 59-302 (4)b.1 & 2 of the Former Chapter 59, the residential districts identified therein shall also include the zone districts defined as “protected districts” in Section 13-3 of the Denver Zoning Code.

(f) For purposes of applying the restrictions on the siting of outdoor animal runs within 20 feet of a habitable residential structure stated in Section 59-2(16) of the Former Chapter 59, the residential zone districts identified therein shall also include the zone districts defined as “protected districts” in Section 13-3 of the Denver Zoning Code.

(g) For purposes of applying the 5-foot side setback for structures that are not single-unit or two-unit dwellings, and which have ground floor commercial or which are four (4) or more stories in height, as required in the Mixed Use Zone Districts in Section 59-312(3) of the Former Chapter 59, the residential zone districts identified therein shall also include all SU and TU zone districts as established on the Official Zoning Map under the Denver Zoning Code.

(h) For purposes of applying various zoning protections to residentially zoned properties, the terms “residential district(s),” “residential zone district(s),” “residential zone(s),” “residentially zoned lot,” and “residentially zoned zone lot” used throughout Former Chapter 59 shall also include the zone districts defined as a “residential zone district or residential district” 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, same use limitations, and same setback standards that apply to development under Former Chapter 59, when that development is located next to lower-intensity residential zone districts that are either "residential zone districts" or "protected districts" or predominantly single-unit and two-unit dwellings (SU and TU zoned) 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 limitations related to "residential zone districts," "protected districts," or to SU and TU zones 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 (RNOs) 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.
- *September 4, 2013*: Notified by email all Registered Neighborhood Organizations about the LUTI Committee meeting on September 17, 2013.

- *October 22, 2013*: Notified by email all Registered Neighborhood Organizations (RNOs) about the revised amendment to be heard at a Planning Board hearing on November 6, 2013.
- *November 22, 2013*: Notified by email all Registered Neighborhood Organizations (RNOs) about the revised amendment to be heard by the LUTI Committee on December 3, 2013.

As of the time of this staff report, written support of the DRMC amendment has been received from Inter-Neighborhood Cooperation (INC) and Curtis Park Neighbors. The public comments are attached to this staff report.

Denver Planning Board Recommendation on Revised Amendment

At its regular November 6, 2013, meeting, the Denver Planning Board considered this amendment, as revised, and voted 9-0 after a public hearing to recommend approval by the City Council. A representative of Curtis Park Neighbors testified in favor of the amendment.

CPD Recommendation

Based on the criteria for review as described above, CPD recommends that the LUTI Committee forward the amendment to the full City Council for consideration and final action.

1 BY AUTHORITY

2 ORDINANCE NO.
3 SERIES OF 2013

COUNCIL BILL NO. 13-_____
COMMITTEE OF REFERENCE:
Land Use Transportation and
Infrastructure

6 **A BILL**

7 **For an ordinance amending Section 59-2, Denver Revised Municipal Code by**
8 **adding subsection (c) relating to Former Chapter 59 controlled districts.**

9
10 **WHEREAS**, the City Council has determined on the basis of evidence and testimony presented
11 at the public hearing that the amendment set forth herein is in conformance with the Denver
12 Comprehensive Plan 2000, is justified by changed or changing conditions, and is reasonably
13 necessary to the promotion of the public health, safety and general welfare.

14 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
15 **DENVER:**

16 **Section 1.** Section 59-2 of the Denver Revised Municipal Code is hereby amended by
17 adding subsections (c) through (h) to read and be read as follows:

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

21
22 (d) For purposes of applying the “L1” limitation on “eating place” primary uses applicable in the
23 R-4-X, B-2, B-3, B-A-2, B-A-4, CCN, I-0, I-1, and I-2 zone districts in Former Chapter 59, the
24 residential districts identified in the L1 limitation shall also include the zone districts defined as
25 “protected districts” in Section 13-3 of the Denver Zoning Code.

26
27 (e) For purposes of applying the “exception to use enclosure requirement” for Mixed Use Zone
28 Districts (C-MU, R-MU, and T-MU zones) in Sections 59-302 (4)b.1 & 2 of the Former Chapter
29 59, the residential districts identified therein shall also include the zone districts defined as
30 “protected districts” in Section 13-3 of the Denver Zoning Code.

31
32 (f) For purposes of applying the restrictions on the siting of outdoor animal runs within 20 feet of
33 a habitable residential structure stated in Section 59-2(16) of the Former Chapter 59, the

1 residential zone districts identified therein shall also include the zone districts defined as
2 “protected districts” in Section 13-3 of the Denver Zoning Code.

3
4 (g) For purposes of applying the 5-foot side setback for structures that are not single-unit or two-
5 unit dwellings, and which have ground floor commercial or which are four (4) or more stories in
6 height, as required in the Mixed Use Zone Districts in Section 59-312(3) of the Former Chapter
7 59, the residential zone districts identified therein shall also include all SU and TU zone districts
8 as established on the Official Zoning Map under the Denver Zoning Code.

9
10 (h) For purposes of applying various zoning protections to residentially zoned properties, the
11 terms “residential district(s),” “residential zone district(s),” “residential zone(s),” “residentially
12 zoned lot,” and “residentially zoned zone lot” used throughout Former Chapter 59 shall also
13 include the zone districts defined as a “residential zone district or residential district” in Section
14 13-3 of the Denver Zoning Code.

15
16 COMMITTEE APPROVAL DATE: _____, 2013.

17 MAYOR-COUNCIL DATE: _____, 2013.

18 PASSED BY THE COUNCIL _____ 2013

19 _____ - PRESIDENT

20 APPROVED: _____ - MAYOR _____ 2013

21 ATTEST: _____ - CLERK AND RECORDER,
22 EX-OFFICIO CLERK OF THE
23 CITY AND COUNTY OF DENVER
24

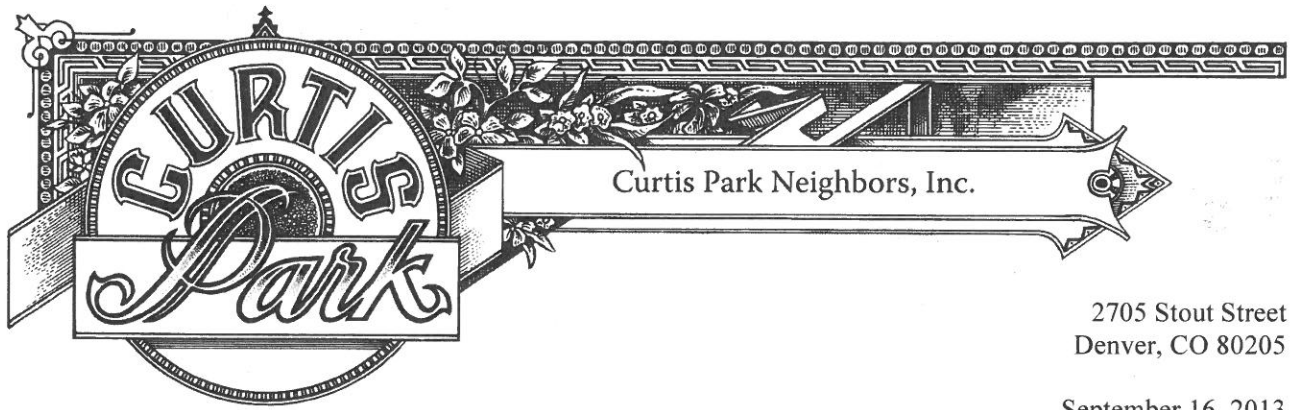
25 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2013 _____ 2013

26 PREPARED BY: Kerry A. Buckey, Assistant City Attorney 10/21/13

27
28 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
29 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
30 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
31 § 3.2.6 of the Charter.
32

33 Douglas J. Friednash, City Attorney

34 BY: _____, _____ City Attorney Date: _____



2705 Stout Street
Denver, CO 80205

September 16, 2013

Denver City Council
1431 Bannock St
Denver, Colorado 80202

Curtis Park Neighbors Supports BR13-0589, Amending DRMC Chapter 59

Curtis Park Neighbors (CPN) supports the BR13-0589, which proposes to amend Chapter 59 to clarify that applicable “controlled” districts still mapped using the old zoning code (Former Chapter 59) must recognize both old-zoning-code and new-zoning-code (Denver Zoning Code) low-scale neighborhood zone districts on the list of “protected districts” for bulk plane purposes.

This important compatibility measure, which exists in different implementations in both the old and new zoning codes, provides a very critical regulation requiring the mass of buildings to “step down” to adjacent neighborhoods. Although care was taken to ensure that the new zoning code would recognize any of the “protected districts” from the old zoning code, an oversight was made in ensuring the compatibility was symmetric. Without this correction, higher-density “controlled” districts in the old zoning code don’t have to recognize any need to step down (via bulk plane limitations) when mapped next to “protected” neighborhood districts from the new zoning code. This leads to unintended consequences in straightforward cases where a neighborhood’s zoning went from an old-code protected district to a new-code protected district with 2010’s zoning code update, and suddenly the unchanged adjacent higher-density area no longer is required to respect the protected nature of the adjacent neighborhood’s zoning.

After our friends in Jefferson Park ran into a case of a developer looking to take advantage of this error in the code, we reviewed the zoning at all of the Curtis Park edges where old-code zoning remains. We found that in some cases this error could be exploited in our neighborhood as well (although this has not yet happened). CPD staff has developed a compelling graphic illustrating all the places in the city where old-code “controlled” districts are adjacent to new-code “protected” districts – these are all at risk of using this unintended gap between the two zoning codes’ regulations, and should demonstrate why **this needs to be corrected as quickly as possible.**

Although this is not the only gap in how old and new zoning codes work when mapped next to one another, it is the most urgent. We trust that other, less pressing gaps will be considered by CPD for any further changes warranted in the coming months.

Joel Noble
President, Curtis Park Neighbors
jnoble@frii.net

This position was taken at the regularly scheduled Curtis Park Neighbors Board meeting on August 19, 2013, as noticed to the neighborhood in the Curtis Park Times newsletter delivered to every residence and business in the neighborhood, with open participation solicited.

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.