BY AUTHORITY

ORDINANCE NO. COUNCIL BILL NO. CB24-xxxx

SERIES OF 2024 COMMITTEE OF REFERENCE:

Land Use, Transportation & Infrastructure

A B I L L

For an ordinance amending Chapter 59 of the Revised Municipal Code, concerning regulation of land retaining zoning designation under former chapter 59 to align with certain regulations of the Denver Zoning Code.

WHEREAS, the City Council has determined on the basis of evidence and testimony presented at the public hearing that the amendment set forth in this ordinance is in conformance with Comprehensive Plan 2040; is reasonably necessary to promote the public health, safety, and general welfare; and will result in uniformity of zone district regulations.

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

Section 1. That section 59-2, D.R.M.C. concerning former chapter 59 is amended by deleting the language stricken and adding the language underlined in subsections (b) and (c) to read as follows:

Sec. 59-2. – Former chapter 59.

(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, except as explicitly stated in sections 59-2(c)(8), 59-2(c)(14), 59-2(c)(15), 59-2(c)(16), 59-2(c)(17), 59-2(c)(23), 59-2(c)(29) and 59-3(b) below.

(c) No changes shall be enacted to the text of the former chapter 59 after June 25, 2010; however, regulation of lands retaining their zoning designation under the former chapter 59 is subject to the following requirements and allowances:

(1) 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.

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(2) Reserved.

(3) For purposes of applying the "exception to use enclosure requirement" for mixed use zone districts (C-MU, R-MU, and T-MU zones) in section 59-302(4)b.1, and 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.

(4) For purposes of applying the restrictions on the siting of outdoor animal runs within twenty (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.

(5) For purposes of applying the five-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 zoning 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.

(6) 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 division ~~section~~ 13.3 of the Denver Zoning Code.

(7) Gardens shall be allowed as an accessory use common, customary and incidental to a primary residential use, and shall comply with all limitations generally applicable to accessory uses stated in former chapter 59, sections 59-87 and 59-88. In addition, marijuana grown as part of a garden accessory to a primary residential use shall comply with all applicable limitations found in the Denver Zoning Code, including, but not limited to, section 11.8 (Uses accessory to primary residential uses—Limitations).

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(8) Any portion of a general development plan approved under former chapter 59 may be repealed in accordance with Section 12.4.12 of the Denver Zoning Code.

(9) For purposes of regulating "Cluster multiple-unit dwellings" throughout the former chapter 59, each "separate, independent dwelling unit" that comprises a "Cluster multiple unit dwelling" use in section 59-2(72) of former chapter 59 may contain a "Household" as defined in section 11.12.2.1.B.3 of the Denver Zoning Code.

(10) For purposes of regulating "Dwelling, multiple unit" throughout the former chapter 59, each "separate independent dwelling unit" that comprises a "Dwelling, multiple unit" use in section 59-2(95) of former chapter 59 may contain a "Household" as defined in section 11.12.2.1.B.3 of the Denver Zoning Code.

(11) For purposes of regulating "Dwelling, single unit" throughout the former chapter 59, each "housekeeping unit" that comprises a "Dwelling, single unit" use in section 59-2(96) of former chapter 59 may contain a "Household" as defined in section 11.12.2.1.B.3 of the Denver Zoning Code.

(12) Reserved. ~~The home occupations in sections 59-89(1)g (Foster family care), and 59-89(1)k (Rooming and/or boarding) of the former chapter 59 are not permitted whenever a dwelling unit exceeds the number of unrelated adults as defined in "Household" from the Denver Zoning Code.~~

(13) The definition of residence for older adults in section 59-2(230) of former chapter 59 shall only apply to a residence for older persons serving nine (9) or more residents; a residence for older adults serving less than nine (9) residents shall be determined as either a "Dwelling, single unit" or "Dwelling, multiple unit" based on the type of structure containing the use, and shall only be permitted as a "Dwelling, single unit" or "Dwelling, multiple unit" in zone districts allowing the use.

(14) For purposes of administering former chapter 59, section 59-51, the creation and alternatives of the board of adjustment shall follow the procedures

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and requirements of Denver Zoning Code section 12.2.6.2.

(15) Regarding variances for land retaining its zoning designation under former chapter 59 and containing only a single unit dwelling use or only a two-unit multiple unit dwelling use, the community planning and development department and the board of adjustment shall apply the concurring vote required for a variance, applicability and limitations, review process, review criteria, and requirements and limitations after approval provisions in the Denver Zoning Code, sections 12.2.6.9.A. and 12.4.7, in place of former chapter 59, sections 59-54(2) and 59-55(a).

(16) The zoning administrator may grant administrative adjustments for the zoning standards stated in the Denver Zoning Code section 12.4.5.2.B-G, and Table 12.4.5.H.3-1 for land retaining its zoning designation under former chapter 59 and containing only a single unit dwelling use or only a two-unit multiple dwelling use, using the review process and review criteria of Denver Zoning Code, section 12.4.5. The zoning administrator shall determine whether an administrative adjustment listed in Denver Zoning Code Table 12.4.5.2 applies to a specific standard in former chapter 59.

(17) The zoning administrator may grant an administrative adjustment to former chapter 59 standards, procedures, or definitions to comply with federal or state law by applying the applicability, extent of adjustment authorized, and review criteria in section 12.4.5.2.A of the Denver Zoning Code.

(18) A temporary managed community is allowed as a temporary use by zoning permit in all zone districts in the former chapter 59, subject to all applicable limitations, definitions, and procedures of the Denver Zoning Code regarding a Temporary Managed Community use. The use limitations of Denver Zoning Code section 11.11.17.2 for a temporary managed community in SU, TU, and RH zone districts apply to a temporary managed community use in the following circumstances:

a. Land retaining R-X, R-0, R-1, R-2, R-2-A, or R-2-B zone districts under the former chapter 59;

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b. Land retaining R-X, R-0, R-1, R-2, R-2-A, or R-2-B zone districts under the former chapter 59, and subject to waivers or conditions; or

c. Land retaining a planned unit development (PUD) zone district under the former chapter 59 if the PUD's district plan describes the types of uses allowed as those allowed in the R-X, R-0, R-1, R-2, R-2-A, or R-2-B zone districts.

(19) One accessory dwelling unit use is permitted as accessory to each primary dwelling unit containing a primary single unit dwelling in all zone districts in the former chapter 59 that allow new single unit dwellings.

(20) Where permitted in the former chapter 59, all accessory dwelling unit uses and detached accessory structures containing an accessory dwelling unit use are subject to the following:

a. Mobile homes, recreational vehicles, and trailers shall not be used as accessory dwelling units.

b. The limits on minimum square feet of gross floor area per occupant of an accessory dwelling unit use stated in Sec. 59-87(c)(1)h.1 of former chapter 59 are not required.

c. The requirement for roof and exterior wall materials of an accessory dwelling unit to be comparable in composition and appearance to that of the use by right stated in Sec. 59-87(c)(1)h.3.ix of former chapter 59 are not required.

(21) In addition to the requirements stated in subsection (c)(20) above, on land retaining RS-4, R-X, R-0, R-1, R-2, R-2-A, or R-2-B zone districts, with or without waivers or conditions, under the former chapter 59, accessory dwelling unit uses and structures containing an accessory dwelling unit use shall meet the following requirements:

a. The maximum building height of a detached accessory structure containing an accessory dwelling unit use shall be twenty four feet

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measured according to section 59-2(52) (building height measurement) of the former chapter 59.

b. With the exception of eaves, flag poles, antennas, chimneys, flues, vents, flush mounted solar panels, and evaporative coolers, no part of any structure shall project through bulk planes which shall be applied as follows:

1. On a zone lot forty feet wide or less, the bulk plane shall begin at a horizontal line which is located directly above the side lot line and which passes through a point twelve feet above the midpoint of such lot line.

2. On a zone lot greater than forty feet wide, the bulk plane shall begin at a horizontal line which is located directly above the side lot line and which passes through a point ten feet above the midpoint of such lot line.

c. A detached accessory structure containing an accessory dwelling unit use shall be located within the rear thirty five percent of the zone lot.

d. The minimum side setbacks of a detached accessory structure containing an accessory dwelling unit use shall be the same as those for the primary structure in the applicable zone district.

e. In the RS-4, R-X, R-0, and R-1 zone districts, the minimum rear setback of a detached accessory structure containing an accessory dwelling unit use shall vary based on its location in the applicable Future Neighborhood Context set forth in the most recently adopted version of Blueprint Denver:

1. Blueprint Denver suburban neighborhood context: twenty feet where the accessory dwelling unit structure is greater than seventeen feet in height—otherwise, ten feet.

2. Blueprint Denver urban edge neighborhood context: twelve feet where no alley abuts the rear zone lot line and the accessory

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dwelling unit structure is greater than seventeen feet in height—otherwise, five feet.

3. Blueprint Denver urban neighborhood context: five feet where no alley abuts the rear zone lot line or where garage doors face an alley—otherwise, zero feet.

f. In the R-2, R-2-A, and R-2-B zone districts, the minimum rear setback shall be five feet where no alley abuts the rear zone lot line or where garage doors face an alley. Otherwise the minimum rear setback shall be zero feet.

g. The maximum building footprint of a detached accessory structure containing an accessory dwelling unit use shall be:

1. Eight hundred sixty four square feet when located on a zone lot with an area of seven thousand square feet or less; or

2. One thousand square feet when located on a zone lot with an area greater than seven thousand square feet.

h. The maximum gross floor area of an accessory dwelling unit use located within a primary structure or a detached accessory structure shall be:

1. On a zone lot with seven thousand square feet or less: Eight hundred sixty four square feet; or

2. On a zone lot greater than seven thousand square feet: one thousand square feet.

i. In the RS-4, R-X, R-0, and R-1 zone districts, the ownership and owner occupancy requirements shall be the same as those for an accessory dwelling unit use in a single-unit zone district in the Denver Zoning Code.

j. In the R-2, R-2-A, and R-2-B zone districts, an accessory dwelling unit use is not required to be operated and maintained under the same

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ownership as the primary dwelling unit to which it is accessory.

k. In the R-2, R-2-A, and R-2-B zone districts, an owner of the existing primary dwelling unit is not required to occupy the existing primary dwelling unit as the owner's primary residence.

(22) In addition to the requirements stated in subsection (c)(20) above, on land retaining R-3, R-3-X, R-4, R-4-X, R-5, B-1, B-2, B-3, B-4, B-5, B-5-T, B-7, B-8, B-8-A, B-8-G, B-A-1, B-A-3, B-A-4, CCN, MS-1, MS-2, MS-3, R-MU-20, R-MU-30, C-MU-10, C-MU-20, C-MU-30, H-1-A, H-1-B, H-2, and Gateway (within Gateway use areas allowing single unit dwelling uses) zone districts, with or without waivers or conditions, a structure containing an accessory dwelling use shall comply with the regulations in former chapter 59, sections 59-87(c) and 59-312, with the following exceptions:

a. An accessory dwelling unit use is not required to be operated and maintained under the same ownership as the primary dwelling unit to which it is accessory.

b. An owner of the existing primary dwelling unit is not required to occupy the primary dwelling unit as the owner's primary residence.

c. The maximum gross floor area of an accessory dwelling unit use located in a primary structure shall be seventy five percent of primary use gross floor area or eight hundred sixty four square feet, whichever is greater.

d. There shall be no maximum gross floor area applied to an accessory dwelling unit use located in a detached accessory structure.

(23) Where a special zone lot plan for a planned building group approved under former chapter 59 specifies a total number of dwelling units or a maximum density of dwelling units, the zoning administrator may allow one or more accessory dwelling units in excess of the specified number of dwelling units or the specified maximum density according to one of the following procedures:

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a. By zoning permit according to the procedures of the former chapter 59 zoning code for an accessory dwelling unit use located within a primary structure or detached accessory structure that is allowed by the approved planned building group, and the building footprint of the approved structures will not be expanded; or

b. By the minor change procedure for a planned building group described in section 59-621 for an accessory dwelling unit use located within a primary structure or a new or expanded detached accessory structure and the building footprint will be expanded beyond those shown in the approved planned building group. Accessory dwelling unit uses and detached accessory structures containing an accessory dwelling unit use will not be considered a change in the character of development for the purposes of administering 59-621(1) or an increase in the intensity of use for the purposes of administering 59-621(3).

(24) The following sections of the Denver Zoning Code regarding use limitations apply to a permitted unenclosed eating place use on land retaining its zoning designation under former chapter 59 ("Unenclosed eating place") in place of any zoning standards and limitations in former chapter 59 for an unenclosed eating place:

a. Denver Zoning Code sections 11.10.14.2, and 11.10.14.3.A and B.

b. Denver Zoning Code section 11.10.14.3.D, except for an unenclosed eating place in the following former chapter 59 zone districts: B-4; B-8; B-8-A; B-8-G; B-5; B-5-T; B-7; B-A-3; MS-1; MS-2; MS-3; PRV; or Gateway use areas MU1, MU2, TCU, or TSU; and

c. Denver Zoning Code section 11.10.14.3.E, except for an unenclosed eating place in the following former chapter 59 zone districts: B-3; B-4; B-8; B-8-A; B-8-G; B-5; B-5-T; B-7; CCN; B-A-2; B-A-3; B-A-4; MS-1; MS-2; MS-3; PRV; or Gateway use areas MU1, MU2, TCU, or TSU;

(25) The zoning administrator may waive or modify ~~grant an administrative~~

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~~adjustment for~~ the requirements of 11.10.14.3.B.2—8 for an unenclosed eating place in accordance with the ~~administrative adjustment~~ process and ~~applicable~~ review criteria of Denver Zoning Code section 11.10.14.3.C ~~12.4.5~~.

(26) The zoning administrator may grant an unenclosed eating place the specific ~~available~~ incentives of Denver Zoning Code section 11.10.14.3.C listed below in accordance with the process of ~~this~~ section 11.10.14.3.~~, except for the following incentives~~:

a. An unenclosed eating place permitted in a main street ~~mixed use~~ district of former chapter 59 may reduce ~~remove~~ required off-street parking spaces ~~only~~ in the amount specified for main street zone districts in the Denver Zoning Code ~~section 11.10.14.3.C.3.b.iii~~.

b. An unenclosed eating place permitted in any zone district of former chapter 59, other than a main street ~~mixed use~~ district, may reduce ~~remove~~ required off-street parking spaces ~~only~~ in the amount specified for zone districts in the Suburban neighborhood context in the Denver Zoning Code ~~section 11.10.14.3.C.3.b.v~~.

(27) An unenclosed eating place must follow the zoning permit with information notice process when the use would otherwise be subject to the approval of the board of adjustment under former chapter 59 section 59-54(3)u.

(28) Any use that the board of adjustment may authorize as an outdoor eating exception under former chapter 59 section 59-54(3)u must follow the applicable provisions in subsection (24)—(28) above.

(29) At the request of an applicant, the zoning administrator may use the review process and criteria in Denver Zoning Code Section 12.3.7.2.A.3 to process an application from an individual property owner for an amendment to either (i) a development plan meeting the requirements below, or (ii) a zone lot within a development plan meeting the requirements below if the zone lot does not contain a single unit dwelling use or a multiple unit dwelling use with two units:

a. A development plan approved by the development review committee

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or the zoning administrator; and

b. A development plan that under former chapter 59 required all owners within the entire land area of the approved plan to apply for an amendment.

Section 2. Effective Date

This ordinance shall be effective February 3, 2025.

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COMMITTEE APPROVAL DATE: [fill in]

MAYOR-COUNCIL DATE: [fill in]

PASSED BY THE COUNCIL: _____,

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____,

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____; _____,

PREPARED BY: Adam C. Hernandez, Assistant City Attorney DATE: [fill in]

Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Kerry Tipper, Denver City Attorney

BY: _____, Assistant City Attorney DATE: _____,

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